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INTERPRETATIVE RULINGS OF THE SELECT COMMITTEE ON ETHICS

SELECT COMMITTEE ON ETHICS

UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

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FOREWORD

Pursuant to the authority granted to the Select Committee on Ethics by the Senate in Senate Resolution 110, 95th Congress, 1st Session, the Committee herewith publishes a complete list of all Interpretative Rulings issued by the Committee since 1977 and an index thereto. These Interpretative Rulings answer questions of a general interest which have been raised by Members, officers and employees of the Senate with respect to the application of the Code of Official Conduct (Rules 34 through 42 of the Standing Rules of the Senate), the franked mail statute and Regulations Governing the Use of the Mailing Frank, and other related matters. The Interpretative Rulings are presented chronologically by rule number and appear with clear references as to the particular rule or statute being addressed.

The Committee staff, at the direction of the Chairman and Vice Chairman, have reviewed all of the outstanding Interpretative Rulings of the Select Committee. This review has resulted in, among other things, a clarification, revision or elimination of previously issued rulings. Thus, rulings which were not seen to be of assistance because of the language used were rewritten; rulings which were based on Senate rules or statutes which have been amended since 1977 were modified; and rulings which were overruled by the Select Committee subsequent to their date of issue have been eliminated entirely.

These Interpretative Rulings may be relied upon by any individual involved in a specific action or activity which is indistinguishable in all its material aspects from the facts on which a particular ruling has been rendered. The Committee encourages written requests for rulings on specific situations not clearly covered by a previously issued Interpretative Ruling. In addition, the Committee staff is available by telephone to discuss issues involving the application of the Code of Official Conduct or the scope of a previously published Interpretative Ruling.

THE SENATE CODE OF OFFICIAL CONDUCT

(Rules 34 through 42 of the Standing Rules of the Senate)

RULE XXXIV

PUBLIC FINANCIAL DISCLOSURE

For purposes of this rule, the provisions of title I of the Ethics in Government Act of 1978 shall be deemed to be a rule of the Senate as it pertains to Members, officers, and employees of the Senate.

VIII

ETHICS IN GOVERNMENT ACT OF 1978

2 USC 701.

TITLE I—LEGISLATIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

COVERAGE

Reports, filing.
2 USC 701.

SEC. 101. (a) Each Member in office on May 15 of a calendar year shall file on or before May 15 of that calendar year a report containing the information as described in section 102(a).

(b)(1) Any individual who is an officer or employee of the legislative branch described in subsection (e) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 102(a) if such individual is or will be such an officer or employee on such May 15.

(2) Any individual whose employment as an officer or employee described in subsection (e) is terminated in any calendar year may be required—

(A) under the rules of the House of Representatives, if such individual would, but for such termination, file a report with the Clerk pursuant to section 103(a), or

(B) under the rules of the Senate, if such individual would, but for such termination, file a report with the Secretary pursuant to section 103(b),

to file a financial disclosure report covering (i) that part of such calendar year during which such individual was employed as such an officer or employee, and (ii) the preceding calendar year if the report required by paragraph (1) covering that calendar year has not been filed.

(c) Within thirty days of assuming the position of an officer or employee described in subsection (e) an individual other than an individual who was employed in the legislative branch immediately before he assumed such position, shall file a report containing the information as described in section 102(b) unless the individual has left another position described in subsection (e) within thirty days prior to assuming his new position. The provisions of the preceding sentence shall not apply to an individual who, as determined by the designated committee of the Senate or the designated committee of the House, as appropriate, is not reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year, except that if he performs the duties of his office or position for more than sixty days in a calendar year, the report required by the preceding sentence shall be filed within fifteen days of the sixtieth day. This subsection shall take effect on January 1, 1979.

Effective date.

(d) Within thirty days of becoming a candidate in a calendar year for any election for the office of Member, or on or before May 15 of that calendar year, whichever is later, but in no event later than seven days prior to the election, and on or before May 15 of each successive year the individual continues to be a candidate, an individual shall file a report containing the information as described in section 102(b). Notwithstanding the preceding sentence, in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, such individual need not file a report unless he becomes a candidate for another vacancy in that office or another office during that year.

(e) The officers and employees referred to in subsections (b) and (c) are—

(1) each officer or employee of the legislative branch who is compensated at a rate equal to or in excess of the annual rate of basic pay in effect for grade GS–16 of the General Schedule; and

(2) at least one principal assistant designated for purposes of this section by each Member who does not have an employee compensated at a rate equal to or in excess of the annual rate of basic pay in effect for grade GS–16 of the General Schedule.

5 USC 5332 note.

For the purposes of this chapter, the legislative branch includes the Architect of the Capitol, the Botanic Gardens, the Congressional Budget Office, the Cost Accounting Standards Board, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of the Attending Physician, National Commission on Air Quality, and the Office of Technology Assessment.

Legislative branch.

(f) Reasonable extensions of time for filing any report may be granted by the designated committee of the Senate with respect to those filing with the Secretary and by the designated committee of the House of Representatives with respect to those filing with the Clerk but in no event may the extension granted to a Member or candidate result in a required report being filed later than seven days prior to an election involving the Member or candidate. If the day on which a report is required to be filed falls on a weekend or holiday, the report may be filed on the next business day.

Time extension.

(g) Notwithstanding the dates specified in subsection (d) of this section, an individual who is a candidate in calendar year 1978 shall file the report required by such subsection not later than November 1, 1978, except that a candidate for the Senate who has filed a report as of such date pursuant to the Rules of the Senate need not file the report required by subsection (d) of this section.

(h) The designated committee of the House of Representatives, or the designated committee of the Senate, as the case may be, may grant a publicly available request for a waiver of any reporting requirement under this section for an individual who is expected to perform or has performed the duties of his office or position for less than one hundred and thirty days in a calendar year, but only if such committee determines that—

(1) such individual is not a full-time employee of the Government,

(2) such individual is able to provide services specially needed by the Government,

(3) it is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(4) public financial disclosure by such individual is not necessary in the circumstances.

CONTENTS OF REPORTS

SEC. 102. (a) Each report filed pursuant to subsections (a) and (b) of section 101 shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)), from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source including speeches, appearances, articles, or other publications, received during the preceding calendar year, aggregating $100 or more in value.

(B) The source and type of income which consists of dividends, interest, rent, and capital gains received during the preceding calendar year which exceeds $100 in amount or value, and an indication of which of the following categories the amount or value of such item or income is within:

(i) not more than $1,000,
(ii) greater than $1,000 but not more than $2,500,
(iii) greater than $2,500 but not more than $5,000,
(iv) greater than $5,000 but not more than $15,000,
(v) greater than $15,000 but not more than $50,000,
(vi) greater than $50,000 but not more than $100,000, or
(vii) greater than $100,000.

(2)(A) The identity of the source and a brief description of any gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any source other than a relative of the reporting individual during the preceding year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported and any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph.

(B) The identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food or entertainment aggregating $100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph.

(C) The identity of the source and a brief description or reimbursements received from any source aggregating $250 or more in value and received during the preceding calendar year.

(D) In an unusual case, a gift need not be aggregated under subparagraph (A) or (B) if a publicly available request for a waiver is granted.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment of the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a relative or any deposits aggregating $5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall

Personal savings account.

include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceeds $10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse;

(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $10,000 as of the close of the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale, or exchange, during the preceding calendar year which exceeds $1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

(6) The identity of all positions held on or before the date of filing during the current calendar year as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This paragraph shall not require the reporting of positions held in any religious, social, fraternity, or political entity and positions solely of an honorary nature.

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(b) Each report filed pursuant to subsections (c) and (d) of section 101 shall include a full and complete statement with respect to the information required by—

(1) paragraph (1) of subsection (a) for the year of filing and the preceding calendar year,

(2) paragraphs (3) and (4) of subsection (a) as of the date specified in the report but which is less than thirty-one days before the filing date, and

(3) paragraph (6) and, in the case of reports filed under section 101(c), paragraph (7) of subsection (a) as of the filing date but for periods described in such paragraphs.

(c)(1) The categories for reporting the amount of value of the items covered in paragraphs (3), (4), and (5) of subsection (a) are as follows:

(A) not more than $5,000;
(B) greater than $5,000 but not more than $15,000;
(C) greater than $15,000 but not more than $50,000;
(D) greater than $50,000 but not more than $100,000;
(E) greater than $100,000 but not more than $250,000; and
(F) greater than $250,000.

(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in this report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (a) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in this report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(d)(1) Except as provided in the last sentence of this paragraph, each report shall also contain information listed in paragraphs (1) through (5) of subsection (a) respecting the spouse or dependent child of the reporting individuals as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed $1,000 and, with respect to a spouse or dependent child, all information required to be reported in subsection (a)(1)(B) with respect to income derived from any asset held by the spouse or dependent child and reported pursuant to paragraph (3). With respect to earned income, if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) In the case of any gifts received by a spouse which are not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment and a brief description and the value of other gifts.

(C) In the case of any reimbursements received by a spouse which are not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of each such reimbursement.

Certification.

(D) In the case of items described in paragraphs (3) through (5), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse's or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of, (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

Each report referred to in subsection (b) of this section shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(e)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a) and (b) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

(A) any qualified blind trust (as defined in paragraph (3)); or

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any dependent child, and

(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of,

but such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the trust under subsection (a)(1)(B) of this section.

"Qualified blind trust," requirements.

(3) For purposes of this subsection, the term "qualified blind trust" includes any trust in which a reporting individual, his spouse, or any dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

(A) The trustee of the trust is a financial institution, an attorney, a certified public accountant, a broker, or an investment adviser, who (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust who)—

(i) is independent of and unassociated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party,

(ii) is not or has not been an employee of any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and

(iii) is not a relative of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party.

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1)(B) of this section but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office.

Definitions.

For purposes of this subsection "interested party" means a reporting individual, his spouse, and any dependent child if the reporting individual, his spouse, or dependent child has a beneficial interest in the principal or income of a qualified blind trust; "broker" has the meaning set forth in section 3(a)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4); "investment adviser" includes any investment adviser who, as determined under regulations prescribed by the supervising ethics office, is generally involved in his role as such an adviser in the management or control of trusts; and "supervising ethics office" means the designated committee of the House of Representatives for those who file the reports required by this title with the Clerk and the designated committee of the Senate for those who file the reports required by this title with the Secretary.

(4) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of section 208 of title 18, United States Code, and any other conflict of interest statutes or regulations of the Federal Government, until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

Copy, filing with ethics office.

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) The executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (c)(1) of this section.

Notification.

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (c)(1) of this section.

Dissolution, notification and filing.

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such dissolution, and

(ii) file with such office a copy of a list of assets of the trust at the time of such dissolution and the category of value under subsection (c) of this subsection of each such asset.

Public availability.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 104, and the provisions of that section shall apply with respect to such documents and lists.

Copy, filing.

(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(iv) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6)(A) A trustee of a qualified blind trust shall not knowingly or negligently (i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection; (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) of this subsection or the trust agreement; or (iv) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly or negligently (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C) of this subsection, or (ii) fail to file any document required by this subsection.

Civil action penalty.

(C)(i) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(ii) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $1,000.

Qualified blind trust, considerations.

(7) Any trust may be considered to be a qualified blind trust if—

(A) the trust instrument is amended to comply with the requirements of paragraph (3) or, in the case of a trust instrument which does not by its terms permit amendment, the trustee, the reporting individual, and any other interested party agree in writing that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); except that in the case of any interested party who is a dependent child, a parent or guardian of such child may execute the agreement referred to in this subparagraph;

(B) a copy of the trust instrument (except testamentary provisions) and a copy of the agreement referred to in subparagraph (A), and a list of the assets held by the trust at the time of approval by the supervising ethics office, including the category of value of each asset as determined under subsection (d) of this section, are filed with such office and made available to the public as provided under paragraph (5)(D) of this subsection; and

(C) the supervising ethics office determines that approval of the trust arrangement as a qualified blind trust is in the particular case appropriate to assure compliance with applicable laws and regulations.

(f) Political campaign funds, including receipts and expenditures, need not be included in any report filed pursuant to this title.

(g) A report filed pursuant to subsection (a) or (b) of section 101 need not contain the information described in subparagraphs (A), (B), and (C) of subsection (a)(2) with respect to gifts and reimbursements received in a period when the reporting individual was not a Member or an officer or employee of the Federal Government.

FILING OF REPORTS; DUTIES OF CLERK AND SECRETARY

2 USC 703.

SEC. 103. (a) The reports required by section 101 of Representatives, Delegates to Congress, the Resident Commissioner from Puerto Rico, officers and employees of the House, candidates seeking election to the House, and officers and employees of the Architect of the Capitol, the Botanic Gardens, the Congressional Budget Office, the Government Printing Office, and the Library of Congress shall be filed with the Clerk.

(b) The reports required by section 101 of Senators, officers and employees of the Senate, candidates seeking election to the Senate, and officers and employees of the General Accounting Office, the Cost Accounting Standards Board, the Office of Technology Assessment, National Commission on Air Quality, and the Office of the Attending Physician shall be filed with the Secretary.

Copies.

(c) A copy of each report filed by a Member or an individual who is a candidate for the office of Member shall be sent by the Clerk or Secretary, as the case may be, to the appropriate State officer as designated in accordance with section 316(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 439(a)) of the State represented by the Member or in which the individual is a candidate, as the case may be, within the seven-day period beginning the day that the report is filed with the Clerk or Secretary.

(d)(1) A copy of each report filed under this title with the Clerk shall be sent by the Clerk to the designated committee of the House of Representatives within the seven-day period beginning the day that the report is filed.

(2) A copy of each report filed with the Secretary shall be sent by the Secretary to the designated committee of the Senate.

FEC assistance.

(e) In carrying out their responsibilities under this title, the Clerk and the Secretary shall avail themselves of the assistance of the Federal Election Commission. The Commission shall make available to the Clerk and the Secretary on a regular basis a complete list of names and addresses of all candidates registered with the Commission, and shall cooperate and coordinate its candidate information and notification program with the Clerk and the Secretary to the greatest extent possible.

Reporting forms and rules and regulations, consultation.

(f) In order to carry out their responsibilities under this title, the designated committee of the House of Representatives, and the designated committee of the Senate, shall develop reporting forms and may promulgate rules and regulations.

ACCESSIBILITY OF REPORTS

Public inspections.
2 USC 704.

SEC. 104. (a) Except as provided in the second sentence of this subsection, within fifteen calendar days after a report is filed with the Clerk under this title, the Clerk shall make such report available for public inspection at reasonable hours. With respect to reports required to be filed by May 15 of any year, such reports shall be made available for public inspection within fifteen calendar days after May 15 of such year. A copy of any such report shall be provided by the Clerk to any person upon request.

(b) Except as provided in the second sentence of this subsection, within fifteen days after a report is filed with the Secretary under this title, the Secretary shall make such report available for public inspection at reasonable hours. With respect to reports required to be filed by May 15 of any year, such reports shall be made available for public inspection within fifteen calendar days after May 15 of such year. A copy of any such report shall be provided by the Secretary to any person upon request.

(c)(1) Notwithstanding subsections (a) and (b), a report may not be made available under this section to any person nor may any copy thereof be provided under this section to any person except upon a written application by such person stating—

(A) that person's name, occupation, and address;

(B) the name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(C) that such person is aware of the prohibitions on the obtaining or use of the report.

Any such application shall be made available to the public throughout the period during which the report is made available to the public.

Copy, fee.

(2) Any person requesting a copy of a report may be required to pay a reasonable fee to cover the cost of reproduction or mailing of such report, excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined by the Clerk or Secretary that waiver or reduction of the fee is in the public interest because furnishing the information may be considered as primarily benefiting the public.

(d) Any report filed under this title with the Clerk or Secretary shall be available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 101(d) and was not subsequently elected, such reports shall be destroyed one year after the individual is no longer a candidate for election to the office of Member unless needed in an ongoing investigation.

Unlawful actions.

(e)(1) It shall be unlawful for any person to obtain or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

Civil action, penalty.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1). The court in which such action is brought may assess against such person a penalty in any amount not to exceed $5,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

REVIEW AND COMPLIANCE PROCEDURES

2 USC 705.

SEC. 105. (a) The designated committee of the House of Representatives and the designated committee of the Senate shall establish procedures for the review of reports sent to them under section 103(d)(1) and section 103(d)(2) to determine whether the reports are filed in a timely manner, are complete, and are in proper form. In the event a determination is made that a report is not so filed, the appropriate committee shall so inform the reporting individual and direct him to take all necessary corrective action.

Congressional committee advisory opinions.

(b) In order to carry out their responsibilities under this title the designated committee of the House of Representatives and the designated committee of the Senate, have power, within their respective jurisdictions, to render any advisory opinion interpreting this title, in writing, to persons covered by this title. Notwithstanding any other provisions of law, the individual to whom a public advisory opinion is rendered in accordance with this subsection, and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who, after the issuance of the advisory opinion, acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of such act, be subject to any sanction provided in this title.

FAILURE TO FILE OR FALSIFYING REPORTS

Civil action, 2 USC 706.

Sec. 106. The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 102. The courts in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000. No action may be brought under this section against any individual with respect to a report filed by such individual in calendar year 1978 pursuant to section 101(d).

Penalty.

DEFINITIONS

2 USC 707.

SEC. 107. For the purposes of this title, the term—

(1) "income" means all income from whatever source derived, including but not limited to the following items; compensation for services, including fees, commissions, and similar items; gross

income derived from business (and net income if the individual elects to include it); gains derived from dealings in property; interests; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

(2) "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual;

(3) "gift" means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by State and local governments, or political subdivisions thereof, by a foreign government within a foreign country, or by the United States Government;

(D) food and beverages consumed at banquets, receptions, or similar events;

(E) consumable products provided by home-State businesses to a Member's office for distribution; or

(F) communications to the offices of a reporting individual including subscriptions to newspapers and periodicals;

2 USC 431 note. (4) "honoraria" has the meaning given such term in the Federal Election Campaign Act of 1971;

(5) "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual;

(6) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(7) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

26 USC 152. (B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954;

(8) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government, the District of Columbia, or any State or political subdivision thereof;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(9) "candidate" means an individual, other than a Member, who seeks nomination for election, or election, to the Congress whether or not such individual is elected, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, (A) if he has taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) if he or his principal campaign committee has taken action to register or file campaign reports required by section 304(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a));

(10) "Clerk" means the Clerk of the House of Representatives;

(11) "Secretary" means the Secretary of the Senate;

(12) "Member" means a United States Senator, as Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;

(13) "election" means (A) a general, special, primary, or runoff election, or (B) a convention or caucus of a political party which has authority to nominate a candidate;

(14) "officer or employee of the House" means any individual, other than a Member, whose compensation is disbursed by the Clerk;

(15) "officer or employee of the Senate" means an individual, other than a Senator or the Vice President, whose compensation is disbursed by the Secretary; and

(16) "designated committee of the House of Representatives" and "designated committee of the Senate" means the committee of the House or Senate, as the case may be, assigned responsibility for administering the reporting requirements of this title.

OTHER LAWS

SEC. 108. The provisions added by this title, and the regulations issued thereunder, shall supersede and preempt any State or local law with respect to financial disclosure by reason of holding the office of Member or candicacy for Federal office or employment by the United States Government. 2 USC 708.

GENERAL ACCOUNTING OFFICE STUDY

SEC. 109. (a) Before November 30, 1980, and regularly thereafter, the Comptroller General of the United States shall conduct a study to determine whether this title is being carried out effectively and whether timely and accurate reports are being filed by individuals subject to this title. 2 USC 709.

Report and legislative recommendations Senate.

(b) Within thirty days after completion of the study, the Comptroller General shall transmit a report to each House of Congress containing a detailed statement of his findings and conclusions, together with his recommendations for such legislative and administrative actions as he deems appropriate. The first such study shall include the Comptroller General's findings and recommendations on the feasibility and potential need for a requirement that systematic random audits be conducted of financial disclosure reports filed under this title, including a thorough discussion of the type and nature of audits that might be conducted; the personnel and other costs of audits; the value of an audit to Members, the appropriate House and Senate committees, and the public; and, if conducted, whether a governmental or nongovernmental unit should perform the audits, and under whose supervision.

RULE XXXV

GIFTS

1. (a) No Member, officer, or employee of the Senate, or the spouse or dependent thereof, shall knowingly accept, directly or indirectly, any gift or gifts having an aggregate value exceeding $100 during a calendar year directly or indirectly from any person, organization or corporation having a direct interest in legislation before the Congress or from any foreign national unless, in an unusual case, a waiver is granted by the Select Committee on Ethics. In determining whether an individual has accepted any gift or gifts having an aggregate value exceeding $100 during a calendar year from any person, organization, or corporation, there may be deducted the aggregate value of gifts (other than gifts described in subparagraph (c)) given by such individual to such person, organization, or corporation during that calendar year.

(b) For purposes of subparagraph (a), only the following shall be deemed to have a direct interest in legislation before the Congress:

(1) a person, organization, or corporation registered under the Federal Regulation of Lobbying Act of 1946, or any successor statute, a person who is an officer or director of such a registered lobbyist, or a person who has been employed or retained by such a registered lobbyist for the purpose of influencing legislation before the Congress; or

(2) a corporation, labor organization, or other organization which maintains a separate segregated fund for political purposes (within the meaning of Section 321 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b)), a person who is an officer or director of such corporation, labor organization, or other organization, or a person who has been employed or retained by such corporation, labor organization, or other organization for the purpose of influencing legislation before the Congress.

(c) The prohibitions of subparagraph (a) do not apply to gifts—

(1) from relatives;

(2) with a value of less than $35;

(3) of personal hospitality of an individual; or

(4) from an individual who is a foreign national if that individual is not acting, directly or indirectly, on behalf of a foreign corporation, partnership or business enterprise, a foreign trade, cultural, educational or other association, a foreign political party or a foreign government.

2. For purposes of this rule—

(a) the term "gift" means a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, including food, lodging, transportation, or entertainment, and reimbursement for other than necessary expenses, unless consideration of equal or greater value is received, but does not include (1) a political contribution otherwise reported as required by law, (2) a loan made in a commercially reasonable manner (including requirements that the loan be repaid and that a reasonable rate of interest be paid), (3) a bequest, inheritance, or other transfer at death, (4) a bona fide award presented in recognization of public service and available to the general public, (5) a reception at which the Member, officer, or employee is to be honored, provided such individual receives no other gifts that exceed the restrictions in this rule, other than a suitable memento, (6) meals, beverages, or entertainment consumed or enjoyed, provided the meals, beverages, or entertainment are not consumed or enjoyed in connection with a gift of overnight lodging, or (7) anything of value given to a spouse or dependent of a reporting individual by the employer of such spouse or dependent in recognition of the service provided by such spouse or dependent, and

(b) the term "relative" has the same meaning given to such term in section 107(2) of title I of the Ethics in Government Act of 1978 (Public Law 95–521).

3. If a Member, officer, or employee, after exercising reasonable diligence to obtain the information necessary to comply with this rule, unknowingly, accepts a gift described in paragraph 1, such Member, officer, or employee shall, upon learning of the nature of the gift and its source, return the gift or, if it is not possible to return the gift, reimburse the donor for the value of the gift.

4. (a) Notwithstanding the provisions of this rule, a Member, officer, or employee of the Senate may participate in a program, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization if such participation is not in violation of any law and if the Select Committee on Ethics has determined that participation in such program by Members, officers, or employees of the Senate is in the interests of the Senate and the United States.

(b) Any Member who accepts an invitation to participate in any such program shall notify the Select Committee in writing of this acceptance. A Member shall also notify the Select Committee in writing whenever he has permitted any officer or employee whom he supervises (within the meaning of paragraph 11 of rule XXXVII) to participate in any such program. The chairman of the Select Committee shall place in the Congressional Record a list of all individuals participating; the supervisors of such individuals, where applicable; and the nature and itinerary of such program.

(c) No Member, officer, or employee may accept funds in connection with participation in a program permitted under subparagraph (a) if such funds are not used for necessary food, lodging, transportation, and related expenses of the Member, officer, or employee.

HONORARIA

On December 14, 1982, Standing Rule 36 ("Outside Earned Income") was deleted from the Standing Rules of the Senate as the result of the passage of Senate Resolution 512.

The receipt of honoraria by Members of the Senate is limited to 40% of the Senator's base salary. This limitation became effective January 1, 1986 and is the result of an amendment to the Supplemental Appropriations Act for Fiscal Year 1983, agreed to Dec. 19, 1985.

In addition, the Federal Election Campaign Act, 2 U.S.C. 441(i) provides that a Member, officer, or employee may not accept more than $2,000 for a speech, appearance, or article.

RULE XXXVII

CONFLICT OF INTEREST

1. A Member, officer, or employee of the Senate shall not receive any compensation, nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt or accrual of which would occur by virtue of influence improperly exerted from his position as a Member, officer, or employee.

2. No Member, officer, or employee shall engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties.

3. No officer or employee shall engage in any outside business or professional activity or employment for compensation unless he has reported in writing when such activity or employment commences and on May 15 of each year thereafter so long as such activity or employment continues, the nature of such activity or employment to his supervisor. The supervisor shall then, in the discharge of his duties, take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate.

4. No Member, officer, or employee shall knowingly use his official position to introduce or aid the progress or passage of legislation, a principal purpose of which is to further only his pecuniary interest, only the pecuniary interest of his immediate family, or only the pecuniary interest of a limited class of persons or enterprises, when he, or his immediate family, or enterprises controlled by them, are members of the affected class.

5. No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall (a) affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; (b) permit that individual's name to be used by such a firm, partnership, association or corporation; or (c) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed. For the purpose of this paragraph, "professional services" shall include but not be limited to those which involve a fiduciary relationship.

6. No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall serve as an officer or member of the board of any publicly held or publicly regulated corporation, financial institution, or business entity. The preceding sentence shall not apply to service of a Member, office, or employee as—

(a) an officer or member of the board of an organization which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, if such service is performed without compensation;

(b) an officer or member of the board of an institution or organization which is principally available to Members, officers, or employees of the Senate, or their families, if such service is performed without compensation; or

(c) a member of the board of a corporation, institution, or other business entity, if (1) the Member, officer, or employee had served continuously as a member of the board thereof for at least two years prior to his election or appointment as a Member, officer, or employee of the Senate, (2) the amount of time required to perform such service is minimal, and (3) the Member, officer, or employee is not a member of, or a member of the staff of any Senate committee which has legislative jurisdiction over any agency of the Government charged with regulating the activities of the corporation, institution, or other business entity.

7. An employee on the staff of a committee who is compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall divest himself of any substantial holdings which may be directly affected by the actions of the committee for which he works, unless the Select Committee, after consultation with the employee's supervisor, grants permission in writing to retain such holdings or the employee makes other arrangements acceptable to the Select Committee and the employee's supervisor to avoid participation in committee actions where there is a conflict of interest, or the appearance thereof.

8. If a Member, upon leaving office, becomes a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or any successor statute, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, he shall not lobby Members, officers, or employees of the Senate for a period of one year after leaving office.

9. If an employee on the staff of a Member, upon leaving that position, becomes a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or any successor statute, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, such employee may not lobby the Member for whom he worked or that Member's staff for a period of one year after leaving that position. If an employee on the staff of a committee, upon leaving his position, becomes such a registered lobbyist or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, such employee may not lobby the members of the committee for which he worked, or the staff of that committee, for a period of one year after leaving his position.

10. For purposes of this rule—

(a) "employee of the Senate" includes an employee or individual described in paragraphs 2, 3, and 4(c) of rule XLI;

(b) an individual who is an employee on the staff of a subcommittee of a committee shall be treated as an employee on the staff of such committee; and

(c) the term "lobbying" means any oral or written communication to influence the content or disposition of any issue before Congress, including any pending or future bill, resolution, treaty, nomination, hearing, report, or investigation; but does not include—

(1) a communication (i) made in the form of testimony given before a committee or office of the Congress, or (ii)

submitted for inclusion in the public record, public docket, or public file of a hearing; or

(2) a communication by an individual, acting solely on his own behalf, for redress of personal grievances, or to express his personal opinion.

11. For purposes of this rule—

(a) a Senator or the Vice President is the supervisor of his administrative, clerical, or other assistants;

(b) a Senator who is the chairman of a committee is the supervisor of the professional, clerical, or other assistants to the committee except that minority staff members shall be under the supervision of the ranking minority Senator on the committee;

(c) a Senator who is a chairman of a subcommittee which has its own staff and financial authorization is the supervisor of the professional, clerical, or other assistants to the subcommittee except that minority staff members shall be under the supervision of the ranking minority Senator on the subcommittee;

(d) the President pro tempore is the supervisor of the Secretary of the Senate, Sergeant at Arms and Doorkeeper, the Chaplain, the Legislative Counsel, and employees of the Office of the Legislative Counsel;

(e) the Secretary of the Senate is the supervisor of employees of his office;

(f) the Sergeant at Arms and Doorkeeper is the supervisor of the employees of his office;

(g) the Majority and Minority Leaders and the Majority and Minority Whips are the supervisors of the research, clerical, or other assistants assigned to their respective offices;

(h) the Majority Leader is the supervisor of the Secretary for the Majority and the Secretary for the Majority is the supervisor of the employees of his office; and

(i) the Minority Leader is the supervisor of the Secretary for the Minority and the Secretary for the Minority is the supervisor of the employees of his office.

RULE XXXVIII

PROHIBITION OF UNOFFICIAL OFFICE ACCOUNTS

1. No member may maintain or have maintained for his use an unofficial office account. The term "unofficial office account" means an account or repository into which funds are received for the purpose, at least in part, of defraying otherwise unreimbursed expenses allowable in connection with the operation of a Member's office. An unofficial office account does not include, and expenses incurred by a Member in connection with his official duties shall be defrayed only from—

(a) personal funds of the Member;

(b) official funds specifically appropriated for that purpose;

(c) funds derived from a political committee (as defined in section 301(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 4310; and

(d) funds received as reasonable reimbursements for expenses incurred by a Member in connection with personal services provided by the Member to the organization making the reimbursement.

2. No contribution (as defined in section 301(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) shall be converted to the personal use of any Member or any former Member. For the purposes of this rule "personal use" does not include reimbursement of expenses incurred by a Member in connection with his official duties.

RULE XXXIX

FOREIGN TRAVEL

1. Unless authorized by the Senate (or by the President of the United States after an adjournment sine die), no funds from the United States Government (including foreign currencies made available under section 502(b) of the Mutual Security Act of 1954 (22 U.S.C. 1754(b)) shall be received for the purpose of travel outside the United States by any Member of the Senate whose term will expire at the end of a Congress after—

(a) the date of the general election in which his successor is elected; or

(b) in the case of a Member who is not a candidate in such general election, the earlier of the date of such general election or the adjournment sine die of the second regular session of that Congress.

2. No member, officer, or employee engaged in foreign travel may claim payment or accept funds from the United States Government (including foreign currencies made available under section 502(b) of the Mutual Security Act of 1954 (22 U.S.C. 1754(b)) for any expense for which the individual has received reimbursement from any other source; nor may such Member, officer, or employee receive reimbursement for the same expense more than once from the United States Government. No Member, officer, or employee shall use any funds furnished to him to defray ordinary and necessary expenses of foreign travel for any purpose other than the purpose or purposes for which such funds were furnished.

3. A per diem allowance provided a Member, officer, or employee in connection with foreign travel shall be used solely for lodging, food, and related expenses and it is the responsibility of the Member, officer, or employee receiving such an allowance to return to the United States Government that portion of the allowance received which is not actually used for necessary lodging, food, and related expenses.

RULE XL

FRANKING PRIVILEGE AND RADIO AND TELEVISION STUDIOS

1. A Senator or an individual who is a candidate for nomination for election, or election, to the Senate may not use the frank for any mass mailing (as defined in section 3210(a)(5)(D) of title 39, United States Code) if such mass mailing is mailed at or delivered to any postal facility less than sixty days immediately before the date of any primary or general election (whether regular, special, or runoff) in which the Senator is a candidate for public office or the individual is a candidate for Senator.

2. A Senator shall use only official funds of the Senate, including his official Senate allowances, to purchase paper, to print, or to prepare any mass mailing material which is to be sent out under the frank.

3. (a) When a Senator disseminates information under the frank by a mass mailing (as defined in section 3210(a)(5)(D) of title 39, United States Code), the Senator shall register annually with the Secretary of the Senate such mass mailings. Such registration shall be made by filing with the Secretary a copy of the matter mailed and providing, on a form supplied by the Secretary, a description of the group or groups of persons to whom the mass mailing was mailed.

(b) The Secretary of the Senate shall promptly make available for public inspection and copying a copy of the mail matter registered, and a description of the group or groups of persons to whom the mass mailing was mailed.

4. Nothing in this rule shall apply to any mailing under the frank which is (a) in direct response to inquiries or requests from persons to whom the matter is mailed; (b) addressed to colleagues in Congress or to government officials (whether Federal, State, or local); or (c) consists entirely of news releases to the communications media.

5. The Senate computer facilities shall not be used (a) to store, maintain, or otherwise process any lists or categories or lists of names and addresses identifying the individuals included in such lists as campaign workers or contributors, as members of a political party, or by any other partisan political designation, (b) to produce computer printouts except as authorized by user guides approved by the Committee on Rules and Administration, or (c) to produce mailing labels for mass mailings, or computer tapes and discs, for use other than in service facilities maintained and operated by the Senate or under contract to the Senate. The Committee on Rules and Administration shall prescribe such regulations not inconsistent with the purposes of this paragraph as it determines necessary to carry out such purposes.

6. (a) The radio and television studios provided by the Senate or by the House of Representatives may not be used by a Senator or an individual who is a candidate for nomination for election, or election, to the Senate less than sixty days immediately before the date of any primary or general election (whether regular, special, or runoff) in which that Senator is a candidate for public office or that individual is a candidate for Senator.

(b) This paragraph shall not apply if the facilities are to be used at the request of, and at the expense of, a licensed broadcast organization or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

RULE XLI

POLITICAL FUND ACTIVITY; DEFINITIONS

1. No officer or employee of the Senate may receive, solicit, be a custodian of, or distribute any funds in connection with any campaign for the nomination for election, or the election, of any individual to be a Member of the Senate or to any other Federal office. This prohibition does not apply to three [1] assistants to a Senator, at least one of whom is in Washington, District of Columbia, who have been designated by that Senator to perform any of the functions described in the first sentence of this paragraph and who are compensated at an annual rate in excess of $10,000, if such designation has been made in writing and filed with the Secretary of the Senate and if each such assistant files a financial statement in the form provided under rule XXXIV for each year during which he is designated under this rule. The Secretary of the Senate shall make the designation available for public inspection.

2. For purposes of the Senate Code of Official Conduct—

(a) an employee of the Senate includes any employee whose salary is disbursed by the Secretary of the Senate; and

(b) the compensation of an officer or employee of the Senate who is a reemployed annuitant shall include amounts received by such officer or employee as an annuity, and such amounts shall be treated as disbursed by the Secretary of the Senate.

3. Before approving the utilization by any committee of the Senate of the services of an officer or employee of the Government in accordance with paragraph 4 of rule XXVII or with an authorization provided by Senate resolution, the Committee on Rules and Administration shall require such officer or employee to agree in writing to comply with the Senate Code of Official Conduct in the same manner and to the same extent as an employee of the Senate. Any such officer or employee shall, for purposes of such Code, be treated as an employee of the Senate receiving compensation disbursed by the Secretary of the Senate in an amount equal to the amount of compensation he is reciving as an officer or employee of the Government.

4. No Member, officer, or employee of the Senate shall utilize the full-time services of an idnividual for more than ninety days in a calendar year in the conduct of official duties of any committee or office of the Senate (including a member's office) unless such individual—

(a) is an officer or employee of the Senate,

(b) is an officer or employee of the Government (other than the Senate), or

(c) agrees in writing to comply with the Senate Code of Official Conduct in the same manner and to the same extent as an employee of the Senate.

Any individual to whom subparagraph (c) applies shall, for purposes of such Code, be treated as an employee of the Senate receiving compensation disbursed by the Secretary of the Senate in an amount equal to the amount of compensation which such individual is receiving from any source for performing such services.

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[1] Changed by section 2 of S. Res. 258 (October 1, 1987).

5. In exceptional circumstances for good cause shown, the Select Committee on Ethics may waive the applicability of any provision of the Senate Code of Official Conduct to an employee hired on a per diem basis.

6. (a) The supervisor of an individual who performs services for any Member, committee, or office of the Senate for a period in excess of four weeks and who receives compensation therefor from any source other than the United States Government shall report to the Select Committee on Ethics with respect to the utilization of the service of such individual.

(b) A report under subparagraph (a) shall be made with respect to an individual—

(1) when such individual begins performing services described in such subparagraph;

(2) at the close of each calendar quarter while such individual is performing such services; and

(3) when such individual ceases to perform such services.

Each such report shall include the identity of the source of the compensation received by such individual and the amount or rate of compensation paid by such source.

(c) No report shall be required under subparagraph (a) with respect to an individual who normally performs services for a Member, committee, or office for less than eight hours a week.

(d) For purposes of this paragraph, the supervisor of an individual shall be determined under paragraph 11 of rule XXXVII.

RULE XLII

EMPLOYMENT PRACTICES

No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof—

(a) fail or refuse to hire an individual;

(b) discharge an individual; or

(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment

on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap.

INTERPRETATIVE RULING NO. 1

Date issued: April 22, 1977

Applicable Rule: 35

Question considered:

A staff member has been designated by his supervising Senator to represent the Senator at a meeting in Ottawa, Canada, sponsored by a non-profit civic organization from the Senator's State and Canadian officials. The meeting will be held to discuss matters within the purview of the Senator's official duties. May the employee accept from the State group-related travel and other necessary expenses?

Ruling:

Rule 35 paragraph 2(a) excludes from the definition of "gift", the necessary expenses of travel incurred in connection with an officially-related event. The Rule thus allows an organization sponsoring a meeting to pay the expenses of travel necessary to enable a Member or employee to participate.

INTERPRETATIVE RULING NO. 2

Date issued: May 2, 1977

Applicable Rules: 34 and 35

Question considered:

May a Senator accept a ticket, valued at $50, to a local fundraising dinner and entertainment sponsored by an organization which has a direct interest in legislation before the Congress?

Ruling:

Paragraph 2(a)(6) of Rule 34(a) excepts from the definition of "gift" for purposes of the $100 limit imposed under that rule:

> meals, beverages, or entertainment consumed or enjoyed, provided the meals, beverages, or entertainment are not consumed or enjoyed in connection with a gift of overnight lodging. . . .

This exception does not extend to the disclosure requirements imposed under Rule 34 requiring the reporting of gifts of food or entertainment of an aggregate value of $250. Where the value of the ticket is less than $250, there would be no reporting of the ticket in a Senator's annual public financial disclosure statement.

INTERPRETATIVE RULING NO. 3

Date issued: May 5, 1977

Applicable Rule: 41

Question considered:

May Senate staff, while on leave, attend and participate as host, in a fundraising event to be held on behalf of a Senator in his state?

Ruling:

No provision of the Code of Official Conduct prohibits staff from attending a campaign fundraising event outside office hours or while on vacation leave. Under Rule 41, paragraph 1, however, a Senate staff member may not receive, solicit, be the custodian of or distribute campaign funds unless he or she is one of the two assistants specifically designated for those purposes. In order to stay well within the spirit and letter of the Rule, staff who are not so designated and who attend such an event should not collect funds or sell tickets or otherwise participate in the fundraising aspects of the event.

Since 18 U.S.C. 602 prohibits staff from making a monetary campaign contribution to a Member of Congress, the participating staff should not attend as paying guests.

Regarding guidelines as to campaign participation by staff after hours or while on annual leave, this Committee has stated that Senators should encourage staff to remove themselves from the payroll for periods during which they expect to be heavily involved in campaign activities. Routine participation after hours or on annual leave time is not now prohibited by the Code of Conduct.

INTERPRETATIVE RULING NO. 5

Date issued: May 11, 1977

Applicable Rule: 41

Question considered:

To what extent may Senate employees volunteer time after office hours or while on annual leave to assist in political fundraising events for Members and candidates for election to the Senate?

Ruling:

While as a general rule, the Committee has advised Members to remove from the Senate payroll staff who participate for any extended period in such activities, the Code of Official Conduct was not intended to prohibit routine matters performed outside of working hours such as making follow-up telephone calls on behalf of the sponsoring organization to determine projected attendance at the event; helping the sponsoring organization make arrangements for flowers, food, and entertainment; and serving on a committee of hosts or hostesses at the time of the event, not as a sponsor, but simply to mingle with the guests on behalf of the sponsoring group.

Unless the employee is one of the two assistants specifically so designated, he or she may not receive, solicit, be the custodian of, or distribute any campaign funds. Accordingly, care must be taken to avoid involvement in those functions.

INTERPRETATIVE RULING NO. 7

Date issued: May 11, 1977

Applicable Rule: 35

Question Considered:

Does Rule 35 prohibit acceptance from a lobbyist of a gift of two $1,000 tickets to a fundraiser?

Ruling:

Paragraph 2(a)(6) of Rule 35 excepts such tickets from the definition of a gift for purposes of the $100 limitation found in paragraph 1(a), and consequently, there is no prohibition against the acceptance for oneself and a guest.

Regarding valuation of the tickets for purposes of disclosure (Rule 34), the value of the gift to the donee is not the purchase price of the ticket paid by the donor. It is only the actual value of the benefits, i.e., food. The value of such a dinner is often stated separately, as that portion of the cost of the ticket may not be deducted by the purchaser for federal income tax purposes.

INTERPRETATIVE RULING NO. 8

Date issued: May 11, 1977

Applicable Rules: 35 and 38

Question considered:

Is acceptance of hotel accommodations by six representatives of various local organizations, who have convened for the purpose of selecting two senior citizens for a Senator's summer intern program, permissible under the Code of Official Conduct? The Senator's office is not directly involved in the selection of the panelists or the interns, but is making the arrangements and payments for the panelists' travel expenses, not from public funds.

Ruling:

The persons referred to as the selection panel are not covered by the Code inasmuch as they are not and would not be deemed Senate employees under any of the provisions of S. Res. 110. In light of the facts stated and assurances that the Senator did not solicit or accept the complimentary accommodations, such accommodations are direct gifts to the individuals, not to the Senator. Hence, they are neither prohibited nor reportable under the Senate Code of Official Conduct.

INTERPRETATIVE RULING NO. 10

Date issued: May 11, 1977

Applicable Rule: 34

Question considered:

Is a reemployed annuitant required to add the amount of the annuity to his Senate salary in order to determine whether he is required to file a financial disclosure statement?

Ruling:

A reemployed annuitant who is a Senate employee for more than 90 days in a calendar year and whose combined annuity and Senate salary exceeds the rate of GS–16 must file an annual disclosure statement.

INTERPRETATIVE RULING NO. 11

Date issued: May 11, 1977

Applicable Rule: 37

Question considered:

May a Senate employee participate in an outside business venture during non-Senate hours? His participation would consist of assisting in arranging financing, which possibly would be guaranteed by a federal agency, for a newly formed corporation to manufacture "hobby aircraft."

Ruling:

Such an activity may fall within the scope of the prohibition in paragraphs 2 and 3 of Rule 37 concerning activities "inconsistent or in conflict with the conscientious performance of office duties" since the risk of the appearance of impropriety is such that the public may question why conventional financing was unavailable and why a Senate employee was selected to perform this service.

Paragraph 3 of Rule 37 requires an employee to report to his supervisor the details of an outside business activity for compensation. The supervisor, in turn, has the responsibility for taking "such action as he or she considers necessary for the avoidance of conflict of interest or interference with duties to the Senate."

While the Ethics Committee cannot substitute its judgment for that of the supervisor regarding any specific proposal, the Committee would be pleased to review the recommendations of the supervisor.

INTERPRETATIVE RULING NO. 13

Date issued: May 16, 1977

Applicable Rule: 38

Question considered:

May a Member use contributions from private sources to defray official expenses?

Ruling:

Rule 38 prohibits the receipt of contributions to an office account for the purpose of defraying otherwise unreimbursed expenses allowable in connection with the operation of a Member's office.

Rule 38 thus provides that a Senator's personal funds and funds received as reasonable reimbursements for expenses incurred by a Member in connection with personal services provided by a Member to the reimbursing organization may be used to defray otherwise unreimbursed expenses of official duties. Funds derived from a political committee may also be used for those purposes. Those funds should not be commingled with other funds, and the political committee should pay directly those official expenses it chooses to defray.

The Committee expresses no opinion as to the tax consequences of using political committee funds to defray official expenses.

INTERPRETATIVE RULING NO. 15

Date issued: May 23, 1977

Applicable Area: Franking

Question considered:

May a new committee chairman's frank be pasted over that of the retired chairman upon a mailing list correction card used in the past to update and purge the committee's mailing list?

Ruling:

Chapter 1, paragraph 3 of *Regulations Governing the Use of the Mailing Frank* of the Select Committee on Ethics states that:

> Mail matter of any committee of the Senate, or of any joint committee of the Congress whose chairman is a Senator, which is frankable under section 3210 of Title 39, U.S. Code, may be sent under the frank of the chairman.

Paragraph 4 of the same chapter of the regulations states that:

> A Senate committee which maintains a mailing list for its official reports may use a franked return-address postal card for addresses to indicate their continued desire to receive reports.

Chapter 2 of the Regulations, paragraph 16, states with respect to "correction of mailing lists":

> Postal Service Regulation 122.5 states that mailing lists submitted by Members of Congress will be corrected as fre-

> quently as requested and that payment for correction of lists submitted by Members of Congress is made under the official mail reimbursement program.

The frank shall not be used for any other means of correcting the mailing list of a Senator.

The chairman of a committee or subcommittee of the Senate may use his frank to bring up to date the mailing list of his committee or subcommittee, if the mailing list is compiled from specific requests and is used only to mail official publications, such as hearings, reports, news releases and announcements. The chairman may use his frank for this purpose by sending return-address cards to addressees on the list.

Accordingly, the return card may be sent to various persons to determine which publications they wish to receive and to bring up to date the mailing list of a committee. The current chairman's frank may be used for this purpose. It is irrelevant that the frank of the new chairman has been pasted over the frank of the retired chairman.

INTERPRETATIVE RULING NO. 16

Date issued: May 23, 1977

Applicable Rule: 38

Question considered:

May a Senator accept the contribution of free use of space in a private law firm, including a volunteer worker and other office facilities, as an intake center for federal casework?

Ruling:

Rule 38 provides that no Member may maintain or have maintained for his use an unofficial office account and that contributions may be used to defray otherwise unreimbursed expenses allowable in connection with the operation of a Member's office only if they are funds spent directly for such purposes by a political committee registered with the Federal Election Commission.

The proposal set forth above would be tantamount to an in-kind contribution by an individual to defray an unreimbursed expense of a federal office holder, in violation of Rule 38.

INTERPRETATIVE RULING NO. 17

Date issued: May 23, 1977

Applicable Rule: 35

Question considered:

Does an arrangement between a Senator and various artists, under the aegis of the Department of Cultural Resources of his state, for the loan, use, and exhibition of their products in his Senate office violate the Code of Conduct?

Ruling:

The Committee report on S. Res. 110, (#95–49, 95th Congress, 1st Session, p. 35) states that:

> The Committee took notice of this historical practice followed in some offices of making home state products, of minimal value, available to constituents and others who visited the office. Such products are most often in the form of food and beverages, such as apples, peanuts, coffee and orange juice. Obviously, these products are provided by businesses back in the Senator's home state, and some of the individuals or organizations involved in providing them may fall within the definition of those with a "direct interest in legislation." Nevertheless, the Committee felt that this time-honored tradition did not involve any conflict of interest and provision of home state products, for this type of distribution, should not be regarded as a gift to the Senator or the office since it is passed on to those visiting the office.

The use of the loaned artwork would fall within the time-honored tradition of the Senate referred to above. The value to the Senator is de minimus, and, consequently, the arrangement is not a "gift".

INTERPRETATIVE RULING NO. 19

Date issued: May 24, 1977

Applicable Rules: 35 and 37

Question considered:

May a Senate employee accept the invitation of a private corporation to speak on data communications at a series of seminars in five cities during a two-month period? The employee is willing to take annual leave sufficient to remove any question as to the propriety of engaging in activities unrelated to his official duties during Senate working hours. The corporation will pay all the necessary expenses of travel, food, and lodging, and in addition, will pay an honorarium in the amount of $100 for each appearance.

Ruling:

Under Rule 35 with respect to gifts, paragraph 2(a) excludes from the definition of a gift the "necessary expenses" of travel, food, and lodging for purposes of the prohibition upon acceptance of gifts from certain sources in excess of a value of $100. Thus, payment of those items by the corporation is permissible. Acceptance of the $100 honorarium presents no problem under the Code of Official Conduct, provided that, pursuant to Rule 37.3, the employer approves of the arrangement in advance.

INTERPRETATIVE RULING NO. 20

Date issued: May 24, 1977

Applicable Rule: 35

Question considered:

May a Senate employee accept an invitation from an organization having an interest in legislation before the Congress to play in a golf tournament sponsored by a memorial fund to which the organization has made a contribution entitling the organization to invite one player per each $150 of its contribution?

Ruling:

The acceptance of the $150 entrance fee would constitute a gift in excess of $100 limit imposed by Rule 35(1)(a). Furthermore, reimbursing the donor $50 to conform to the Rule 35 limitation of $100 with respect to such gifts is inconsistent with the purpose of the Rule.

INTERPRETATIVE RULING NO. 21

Date issued: May 25, 1977

Applicable Rule: 35

Question considered:

Does Rule 35 preclude attendance by the Senate delegation at official functions given by the Canadian hosts of the annual Canada-United States Interparliamentary Group which was established in 1959 pursuant to 22 U.S.C. 276(d) and (g) May 27–31, 1977 in Victoria, British Columbia?

Ruling:

Participation in this Interparliamentary Group is part of the official duties of the Senate and its delegation. The expenses of participation are covered by an annual appropriation of funds by the Congress, and therefore are not within the scope of Rule 35 of the Code, which prohibits payment of the expenses of foreign travel by foreign governments or organizations.

Embassy functions, such as dinners and other social functions, are exempt from Rule 35 which does not exclude acceptance of official hospitality of a de minimus nature provided that it is incidental to the deliberations of an official delegation to an international conference.

INTERPRETATIVE RULING NO. 22

Date issued: May 26, 1977

Applicable Rule: 41

Question considered:

May Senate staff solicit, receive, or distribute funds for a campaign organization, and during off hours, participate in party activities which may include fundraising efforts?

Ruling:

Rule 41 provides that two staff assistants may be designated by a Senator to solicit, to be the custodians of, or to distribute funds in connection with a campaign, but no other employee of a Senator or Senate committee may solicit funds (or solicit others to solicit funds on behalf of a Senator) while on the Senate payroll. Staff may be removed from the payroll to engage in such campaign activities.

It is not intended that Senate employees be barred completely from participation in all political activity. Outside of Senate office hours staff may assist in planning and making arrangements for fundraisers so long as they do not become involved with solicitation of funds.

INTERPRETATIVE RULING NO. 23

Date issued: May 26, 1977

Applicable Rule: 37

Question considered:

May the staff director of a Senate committee accept appointment to the advisory board of a college interested in establishing a center which may be eligible for partial federal funding, pursuant to legislation now under consideration by the committee of which he is a staff director?

Ruling:

The appointment in question would create the appearance of conflict with the subject's responsibilities as staff director of the committee. While Rule 37 permits Members, officers, and employees to serve in such capacities for a 501(c) entity if they do not receive compensation therefor, the Committee recommended that, under these particular circumstances, the staff director not accept the appointment.

INTERPRETATIVE RULING NO. 24

Date issued: May 26, 1977

Applicable Area: Miscellaneous

Question considered:

May a Senator store political documents, such as records and financial statements of past campaigns, in his Washington office and in federal space provided in his state?

Ruling:

The Committee is not aware of any Senate rule or law on these points. Counsel for GSA advises that he knows of no law or regulation with respect to what may be stored in space under its jurisdiction.

Storage of substantial quantities of such personal and political materials, i.e., bulk storage of materials unrelated to one's official duties, would be an improper use of public property. Members are, however, entitled to some latitude with respect to documents needed for reference purposes or public disclosure. Campaign materials used by Members for gifts and all such materials that are incidental to the normal business of a Senate office and require no substantial storage space may be maintained in a Senator's offices.

INTERPRETATIVE RULING NO. 27

Date issued: June 7, 1977

Applicable Rule: 37

Question considered:

Would a Senate employee's service in a U.S. Army Reserve Unit as a Chief Warrant Officer (CW2) be inconsistent with the Senate Code of Official Conduct?

Service normally entails one weekend each month and two weeks active duty each year, with compensation for each year being approximately $1,710. The employee is a legislative aide to a Senator, although his official duties do not involve him in the activities of the Armed Services Committee or in any aspect of military reserve affairs legislation or casework. The employee's supervising Senator is of the opinion there is no potential conflict.

Ruling:

The outside employment, as described above, would not constitute a conflict of interest under Rule 37 or violate any other provision of the Code. Paragraph 3 of Rule 37 requires an employee to report in writing such outside employment to his supervisor when it commences and on May 15 of each year that it continues.

INTERPRETATIVE RULING NO. 29

Date issued: June 9, 1977

Applicable Rules: 34 and 35

Question considered:

May a Member or Senate employee participate on an all expenses paid basis in a one-day charitable golf-tennis tournament, the purpose of which is to raise funds for the Vince Lombardi Memorial Cancer Center?

Ruling:

The foundation issues invitations to "celebrities" in order to promote contributions to the foundation for the privilege of playing with certain well-known persons in the tournament.

This participation is a contribution by the invited Member rather than a gift from the foundation, and accordingly, it does not violate any provision of the Code of Official Conduct. Where the foundation pays for or reimburses the Senator for the expenses of travel and the reimbursement exceeds $250, such reimbursement is reportable by the Senator on the annual public financial disclosure statement.

INTERPRETATIVE RULING NO. 30

Date issued: June 13, 1977

Applicable Rule: 37

Question considered:

Must a member of an advisory council to an executive agency, appointed by the President, resign his position on the council when he becomes a Senate employee? If not, may he accept the $100 per diem paid by the agency for time spent serving on the council?

Ruling:

Paragraph 2 of Rule 37 on Conflicts of Interest prohibits an employee from engaging in outside professional employment for compensation which conflicts with the performance of official duties. Without knowing either what the prospective employee's duties would be, or whether the outside activity would present a conflict, the Committee cannot advise as to whether a conflict of interest would be presented by the outside employment. Under Paragraph 3 of Rule 37 the supervisor of an employee who engages in outside professional activity for compensation is required to "take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate."

The Committee finds nothing in the Rules which would prohibit a Senate employee from serving on such a council. The Committee points out, however, that the Dual Compensation Act, 4 U.S.C. 5533(c), would appear to prohibit anyone who is paid a salary by the Secretary of the Senate from being paid for another U.S. Government position, even if part-time. The Committee does not have responsibility for the enforcement of this Act; it would be advisable therefore, to refer to the statute and consult with the Disbursing Office on the question.

INTERPRETATIVE RULING No. 31

Date issued: June 16, 1977

Applicable Rules: 34 and 35

Question considered:

What is the value of a season pass for sporting events for purposes of Rule 35, prohibiting acceptance of gifts from persons with a direct interest in legislation aggregating more than $100 in a calendar year, and Rule 34, regarding financial disclosure?

Ruling:

The value of a season pass is the full market value at the time it is accepted and is undiminished by failure to use it or a portion of it. The ticket itself is a gift, if accepted, whether or not it is later exchanged for goods, services, entertainment or cash.

Thus, if the actual cost of a season ticket is $175 at the time it is given as a gift, then its value for the purpose of applying the gift and disclosure rules is $175 and may not be calculated on the basis of events actually attended.

INTERPRETATIVE RULING No. 32

Date issued: June 17, 1977

Applicable Rule: 41

Question considered:

May an employee on the personal staff of a Senator also serve as the chief administrative officer of a "political committee", within the meaning of 2 U.S.C. 431(d) of the Federal Election Campaign Act, which has as its principal purpose the raising of campaign funds for candidates other than for the Senator for whom the employer works?

Ruling:

Senate Rule 41 prohibits an officer or employee of the Senate from receiving, soliciting, being the custodian of, or distributing funds in connection with any campaign for the nomination or election of any individual for any Federal office. The Rule provides an exception, however, which allows each Senator to designate as many as two employees who may, with the permission of the employing Senator receive, solicit, be a custodian of, or distribute funds in connection with any campaign for nomination for election, or election, of any individual to any Federal office. As a result, a properly designated staffer may serve as a chief administrative officer of a political committee whose purpose is to raise funds for Federal candidates other than the employing Senator.

INTERPRETATIVE RULING No. 33

Date issued: June 28, 1977

Applicable Rule: 37

Question considered:

What provisions of the Code of Official Conduct must a full-time aide to a Senator with a salary less than $25,000 consider in determining whether or not outside employment is proper?

Ruling:

The propriety of outside employment is governed by Rule 37. No employee, regardless of salary level, may receive compensation by virtue of influence improperly exerted. Nor may any employee engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties. Any outside employment for compensation must be reported in writing to the supervising Senator when the employment commences, and thereafter on May 15 of each year. That report must describe the nature of the employment. The supervising Senator must then take whatever action is appropriate for the avoidance of conflict of interest or interference with duties to the Senate. That action could, of course, be a denial of permission to undertake or continue the outside employment.

Employees compensated at more than $25,000 per year are also subject to restrictions on providing professional services for compensation and on serving as officers or on boards of publicly-held or regulated corporations, financial institutions or business entities.

INTERPRETATIVE RULING No. 35

Date issued: June 28, 1977

Applicable Rule: 35

Question considered:

May a Senator on an official inspection tour organized by a Senator of the State to be visited accept travel on private aircraft and other travel expenses (lodging and food) from a corporation with a direct interest in legislation when the corporation's installation or property is the subject of the inspection tour and the corporation is sponsoring the tour?

Ruling:

Discussions during the debate on S. Res. 110 established guidelines for this kind of travel insofar as Rule 35 pertaining to gifts is concerned. As long as the sponsoring organization provides the transportation and the trip is for an official purpose, the acceptance of the travel is allowable under Rule 35 since it is considered to be "reimbursement" or the provision of a "necessary expense".

INTERPRETATIVE RULING NO. 36

Date issued: June 28, 1977

Applicable Rule: 37

Question considered:

Is it a violation of the Code of Official Conduct for a Senate employee, compensated at more than $25,000 per annum and who serves as a legislative assistant for agricultural affairs, to be involved in an agriculture related business? The employee owns a company bearing his name which operates a dairy business and leases land to a corporation operating in a diversified form in which the employee is the major shareholder and serves (without compensation) as Chairman and President. The employee's sons receive salaries for running the company and the corporation, and the employee receives rental income in connection with the lease of land to the corporation and may receive dividend incomes as the principal shareholder of the corporation.

Ruling:

There is no provision of the Code of Official Conduct which would prohibit the employee from remaining on the Senate payroll. Paragraph 4 of Rule 37 prohibits an employee from aiding the passage of legislation which would further his pecuniary interest, that of his family or of a limited class of persons or enterprises. The report accompanying S. Res. 110 (S. Rept. 95-49) states at page 42:

> . . . Legislation may have a significant financial effect on a Senator because his holdings are involved, but if the legislation also has a broad, general impact on his state or the nation, the prohibitions (of paragraph 4) would not apply.

The Report cites the example of a dairy farmer representing a dairy farming state who introduces, works for, and votes for legislation raising or maintaining dairy price supports. Because there would be a strong presumption that the Member was working on behalf of the public interest and the needs of his constituents and that his own financial interest was incidental, the Member would be part of a class affected by the legislation but would not be a member of a "limited class" for the purposes of paragraph 4 and thus would not fall under the stricture of the Rule.

With respect to paragaph 6 of Rule 37, which deals with affiliation with a firm, partnership or corporation and the use of an employee's name by such an entity, the Report further states that paragraph 6 "reaches the major professsion in addition to law, such as medicine, engineering, architecture and similar type of activities." These professions, unlike farming, involve a fiduciary relationship between the practitioner and clients which often would create a conflict with Senate duties. Accordingly, the Committee finds no violation of Rule 37.

INTERPRETATIVE RULING NO. 37

Date issued: June 28, 1977

Applicable Area: Miscellaneous

Question considered:

May a newspaper reporter have access to the files, records and opinions of the former Select Committee on Standards and Conduct now in the custody of the Select Committee on Ethics?

Ruling:

This Committee will fully respect the public's right to know. It is required to, and will, make available to complainants, as well as to persons charged, its findings in investigations involving violations of the franking privilege and the Code of Official Conduct. If it decides not to investigate complaints, the complainant will be advised with an explanation. Furthermore, the Committee has kept nearly all of its proceedings open to the public and will continue to do so to the extent that individual rights and national security permit. It will make public all of its interpretations of the Code.

The files of this Committee and its predecessor, not unlike those of a grand jury, from time to time receive unsupported complaints, highly personal information and information affecting the national security which would harm individual rights or national interests if revealed. Disclosure of such information would contravene law and time-honored standards of Anglo-Saxon justice, as well as severely handicap the Committee in its educational, investigative and judgmental duties. The Committee cannot, therefore, open all its files in response to such requests. It will make its opinions and advisory rulings public in due course.

INTERPRETATIVE RULING NO. 38

Date issued: June 28, 1977

Applicable Rule: 38

Question considered:

May a Senator or employee use borrowed automobiles or automobiles leased at less than the commercial rate for official travel in the Senator's home state?

Ruling:

The Committee previously has ruled (see Interpretative Ruling No. 16) that acceptance of a donation of space and facilities in a private law firm for casework is an "in-kind contribution" to defray an official expense in violation of Rule 38. That rule provides that no Member may maintain or have maintained for his use an unofficial office account or otherwise use contributions (other than funds of a political committee reported under FECA regulations) to defray expenses incurred in connection with his official duties. The loan of an automobile for official use by an individual would likewise be prohibited, as would the leasing of an automobile at less than the commercial rate.

INTERPRETATIVE RULING NO. 39

Date issued: June 29, 1977

Applicable Rule: 37

Question considered:

May a Senate employee undertake outside employment for compensation as a consultant to a university on a project funded in part by the Federal Government and by two states and as executive secretary to a state advisory committee, where such employment could require as much as 84 days of the employee's time per year?

Ruling:

These activities raise questions as to whether the time demands of the outside employment will interfere with the employee's "conscientious performance of Senate duties" as provided in paragraph 2 of Rule 37, or cause an actual or apparent conflict of interest. Rule 37 imposes upon a Member responsibility for the avoidance of conflicts by his staff. However, since the Member has expressed the opinion that the outside activities will not interfere with the employee's Senate employment, the Committee can point out the relevant considerations but in these circumstances, it is not in a position to substitute its judgment for that of the Member.

INTERPRETATIVE RULING NO. 40

Date issued: July 1, 1977

Applicable Area: Franking

Question considered:

Does the regulation prohibiting use of the mailing frank for the mass mailing of a newsletter in which personally phrased references to a Senator appear more than an average of 8 times per page also apply to reprints of speeches and other materials from the *Congressional Record?*

Ruling:

Title 39 U.S.C.A. 3212 states that reprints from the *Congressional Record* may be mailed under the frank provided such material would otherwise be frankable under section 3210. Section 3210 prohibits use of the frank to mail "personal and political" matters. Paragraphs 13 and 14 of the regulations define the personal and political matters which are not frankable, but do not mention overuse of personal references to a Senator.

Paragraph 4 of the franked mail regulations refers to newsletter and news releases. The number of personal references which occur on a page has no bearing on the use of the frank for the mailing of frankable material reprinted from the *Congressional Record* when the *Record* reprint consists of an unedited statement or article. If, however, material from the *Record* is to be reprinted in a newsletter or other mass mailing and consists of edited text taken from a statement or article, the "personal reference" restriction would apply.

INTERPRETATIVE RULING NO. 42

Dated issued July 1, 1977

Applicable Area: Franking

Question considered:

May a Senator use the frank to mail a booklet containing matter relating to his or her background and personal and professional achievements and accomplishments for the state he or she represents and its people?

Ruling:

Such a booklet constitutes biographical matter within the meaning of the *Regulations Governing the Use of the Mailing Frank.* The frank may be used to mail the booklet in response to specific requests for a copy, requests for biographical material about the Senator, and requests for information about Federal projects and other benefits obtained by the Senator on behalf of the state and his constituents. The frank may not be used for a mass mailing of the booklet for any potential political use or during a campaign.

INTERPRETATIVE RULING NO. 43

Date issued: July 13, 1977

Applicable Rules: 35 and 38

Question considered:

May a Senator receive, without charge, a research product, the retail value of which is in excess of $200 per year, from a company whose business is the publication of public affairs research?

Ruling:

For purposes of the Gift Rule, if the donating organization has a "direct interest in legislation", as we believe is the case here, anything of value in excess of $100 may not be accepted. The value is the retail value of the benefit received, unless a lower value is established to the Committee's satisfaction.

Further, the Committee has ruled in similar cases that "in-kind" donations to Senators for official purposes fall under the Rule 38 prohibition on unofficial office accounts. Donation of the subscription service for official use would likewise be prohibited.

INTERPRETATIVE RULING No. 44

Date issued: July 18, 1977

Applicable Rules: 38 and 40

Question considered:

May a Senator incorporate computerized address records of voters secured from county election boards in the Senate's computerized mailing system for use in producing franked mass mail?

Ruling:

Under Regulations of the Committee on Rules and Administration and Rule 40, paragraph 5, the incorporation of computerized voter address records in the Senate's computer-maintained mailing lists is permissible, but only if such lists bear no identification of individuals as campaign workers, contributors, or as members of a political party, and the lists do not contain any other partisan political information.

The Select Committee on Ethics concludes such records may not be acquired selectively or sorted with the intent of targeting mailings to likely election supporters. The acquisition and incorporation only of lists selected on the basis of high incidence of partisan behavior, for example, is not acceptable.

The use of a Senator's official consolidated allowance to purchase or prepare such records is a matter under the responsibility of the Committee on Rules and Administration.

INTERPRETATIVE RULING No. 47

Date issued: August 3, 1977

Applicable Rule: 38

Question considered:

May a Senator's office use postage purchased and supplied by his or her campaign committee for its mailings to the campaign committee?

Ruling:

The authorized use of political committee funds for this purpose, a campaign purpose rather than an official expense, is not within the jurisdiction of this Committee. However, no Senate Rule prohibits a Senator or his or her office from accepting and using postage purchased with funds of the campaign committee for correspondence with the Senator's campaign committee.

INTERPRETATIVE RULING No. 48

Date issued: August 5, 1977

Applicable Rule: 37

Question considered:

May a Senate Subcommittee employ as a consultant and later as its chief counsel, an attorney who plans to leave the Senate payroll later in the year, temporarily to return to association with his former law firm to argue a case pending before an appellate court on a subject which is a direct and principal concern of the Subcommittee, and then upon returning to the Senate payroll, sever his ties with the firm following the appeal proceedings?

Ruling:

The employee's continuing association with the firm for purposes of preparing the appeal while also acting as a consultant to the Subcommittee (even though he would terminate that association when he becomes chief counsel), and his continuing obligations to the firm's client in connection with the appeal, create both the appearance of a conflict of interest and too great a potential for an actual conflict.

Accordingly, the Subcommittee should not employ the person in question in either capacity until his association with the firm is terminated and his obligations to the firm's client have been discharged.

INTERPRETATIVE RULING No. 49

Date issued: August 5, 1977

Applicable Rule: 41

Question considered:

In what fund-raising activities may Senate employees who are not designated for political fund activity under Rule 41 participate?

Ruling:

An employee who is not a designee under Rule 41 must exercise care to perform only routine political activities in which he does not directly receive, solicit, act as custodian of, or distribute campaign funds, and to perform these only in off-duty hours.

The Rule 41 prohibition of political fund activity by other than designated staff applies to duty hours, off-duty hours and vacation leave.

INTERPRETATIVE RULING No. 50

Date issued: August 5, 1977

Applicable Area: Franking

Question considered:

May a Senator enclose with his newsletter, two cards to be given by the recipient of the newsletter to friends or relatives who also may be interested in being put on the Senator's mailing list for purposes of receiving the newsletter, when the return cards do not bear the frank and clearly indicate that the person who puts his or her name and address thereon (indicating a wish to be on the mailing list) must also affix thereto a stamp for purposes of mailing the card to the Senator's office?

Ruling:

The Committee is unaware of any provision of the franking statute or regulations which prohibits this procedure.

INTERPRETATIVE RULING No. 52

Date issued: August 23, 1977

Applicable Area: Franking

Question considered:

Is it a proper use of a Member's franking privilege to mass mail to his constituents a selected list of pamphlets (prepared by Executive agencies) which are available upon order from the Consumer Information Center in Colorado?

Ruling:

Title 39 U.S.C. section 3210(a)(2) indicates with respect to the use of the frank by Members of Congress that it was intended to be confined to assisting them in the performance of official duties of the Legislative branch.

We are aware that paragraph (a) of Chapter Two of the *Regulations Governing the Use of the Mailing Frank* provides that the franking of Federal publications containing items of general information is authorized. However, the pamphlets referred to in this request are not publications printed by order of Congress nor do the pamphlets themselves bear more than an accidental relationship to the legislative process.

For the foregoing reasons, the above described use of the franking privilege is not within the intent of the statute or the purpose of the privilege.

INTERPRETATIVE RULING NO. 53

Date issued: August 25, 1977

Applicable Rule: 35

Question considered:

Rule 35 (Gifts) defines a gift to include almost anything of value. However, the Rule provides certain exceptions to that definition, including, among others,

> "(5) a reception at which the Member, officer, or employee is to be honored, provided such individual receives no other gifts that exceed the restrictions in this rule, other than a suitable memento"; and
>
> "(6) meals, beverages, or entertainment consumed or enjoyed, provided the meals, beverages, or entertainment are not consumed or enjoyed in connection with a gift of overnight lodging."

When entertainment with food and beverages is provided for a general collection of persons including Senate Members, officers, employees, and spouses, is the amount chargeable as a gift determined by dividing the cost of the food, beverages, and entertainment by the number of persons present?

Is the answer to the foregoing question any different if an individual or organization pays for the entire cost of food, beverages, and entertainment when the occasion is confined either entirely or primarily to the staff and dependents of a particular Member?

How should exception #5 to the definition of gifts relating to a reception honoring Members, officers, or employees be construed generally and in terms of the foregoing questions insofar as who will be considered to have received a gift and in determining the amount thereof?

How should exception #6 to the definition of a gift relating to food, beverages, and entertainment "consumed or enjoyed" be construed generally and in relation to the foregoing questions insofar as who will be deemed to have received a gift and in what amount?

Ruling:

The first two questions concern the amount chargeable as a gift when entertainment with food and beverages is provided. Under exception #6 quoted above, such entertainment is not considered a gift under Rule 35, since apparently no overnight lodging is involved.

The disclosure requirements of Rule 34 nevertheless must be observed. The value of the gift is determined by the per-person fee charged by a hotel or restaurant for the meals, beverages, and entertainment, or, if not available, by computing such a per-person fee based on the total cost divided by the number of persons entertained. The value of the gift in such cases is not affected by the composition of the guest list.

Exception #5 to Rule 35 quoted above should be read to apply only to gifts to the individual being honored by a reception. In other words, the value of the entire reception is not considered a gift to the Member or Senate employee who may be the guest of honor.

Exception #6 to Rule 35 would apply to any gifts of food, beverages, or entertainment as long as no overnight lodging is involved. Each person who attends such a function receives a gift and the value of the gift would be computed on a per-person basis, as described previously.

INTERPRETATIVE RULING NO. 54

Date issued: August 30, 1977

Applicable Rule: 37

Question considered:

May a professional staff member accept a position as a Consumer Representative on a local government council which has an interest in legislation under the jurisdiction of the Committee on which he serves?

Ruling:

In the present case the local government council had an active interest in legislation pending before the Committee that employed the staff member. The council was also active in attempting to have its views on pending legislation considered.

Rule 37 states that no Member, officer, or employee may engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of Senate duties. Although the service here is without compensation and thus not explicitly prohibited by the Rule, the Committee is of the opinion that service on the council by this Committee staff member would create the appearance of a conflict with his Committee staff responsibilities. Consequently, the Committee advised that the staff member not serve on the council.

INTERPRETATIVE RULING NO. 55

Date issued: September 7, 1977

Applicable Rule: 37

Question considered:

May a full-time Senate employee who is employed in a Member's State office, also serve as a City Council member at a salary of less than $200 per month?

Ruling:

Under Rule 37 no Member, officer, or employee of the Senate may engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties. Paragraph 3 of Rule 37 places the burden of ensuring that no conflict arises on the employee's supervisor. Under the facts of this case, the Committee found the supervisor had properly evaluated the situation. The Committee noted that city council service by this employee was unlikely to present any conflicts with his full-time position as a Senator's press relations coordinator.

INTERPRETATIVE RULING No. 56

Date issued: September 7, 1977

Applicable Rules: 34 and 37

Question considered:

May a Member and a staff person receive compensation for collaboration on a book which concerns the subject matter of hearings held before the Member's Committee and was jointly written after regular Senate office hours?

Ruling:

Rule 37 prohibits Members and employees from engaging in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with performance of official duties. The Committee found the proposed activity permissible because it was conducted in off-duty hours and the book draws largely on Committee hearings and reports all of which are readily available to the public.

Income received would be reported pursuant to the financial disclosure requirements of the Ethics in Government Act.

INTERPRETATIVE RULING No. 57

Date issued: September 8, 1977

Applicable Rules: 34 and 35

Question considered:

May a Senator accept a constituent's offer to be flown to the Senator's home State from Washington in an aircraft owned by a Corporation which neither is or retains a lobbyist nor maintains a separate, segregated political fund within the meaning of Rule 35?

Ruling:

The Rule 35 prohibitions on the acceptance of "gifts" apply only to "gifts" offered by persons or organizations which have a direct interest in legislation pending before Congress as defined in the Rule. In this instance, the offer of air transportation to the Senator's home State may be accepted. However, this travel will be reportable as a gift under Senate Rule 34 if the aggregate value of gifts of transportation, lodging, food, or entertainment from the same source in the calendar year (excepting those of $35 or less) exceeds $250.

INTERPRETATIVE RULING NO. 58

Dated issued: September 12, 1977

Applicable Rules: 34 and 35

Question considered:

May a Senator, officer, or employee accept the invitation of a major air carrier to fly on its inaugural flight over a new route?

Ruling:

If the airliner is not a "prohibited source", the offer may be accepted within the parameters of Rule 35. It should be reported as a gift under Rule 34 if the value of all gifts of transportation from the airline in a calendar year totalled $250 or more.

The offer from the airline may also be accepted if the appropriate commercial fare is paid by the Senator to reimburse the airline. In such an instance, there would be no resultant disclosure obligation.

INTERPRETATIVE RULING NO. 59

Date issued: September 13, 1977

Applicable Rule: 41

Question considered:

May a Senate employee engage in substantial campaign activity, including receiving, soliciting, maintaining custody of, or distributing campaign funds, while the staff member is off the Senate payroll, even though it is contemplated that the employee will be rehired in his old position when the campaign terminates?

Ruling:

Members can and should remove staff from the Senate payroll when they are to participate for an extended period in substantial campaign activities. If an employee is removed from the Senate payroll, the restrictions found in Rule 41 with respect to political fund-raising activities would not be applicable, even though there might be an understanding between the former employee and his or her Senator that the employee would return to the Senate payroll at a future date.

INTERPRETATIVE RULING NO. 60

Date issued: September 13, 1977

Applicable Area: Miscellaneous

Question considered:

Is it permissible for a Senator's personal staff to be assigned to assist in the recordkeeping and administrative details necessary to the Senator's compliance with the financial disclosure requirement and the honorarium limitation established by 2 U.S.C. 31?

Ruling:

The Code of Official Conduct does not prohibit the assignment of such functions to staff members of a Senator. Compliance with the rules and statutes regarding financial disclosure and honoraria limitations is a Senate duty, and therefore staff members may assist in this task.

INTERPRETATIVE RULING No. 61

Date issued: September 13, 1977

Applicable Rules: 34, 35, and 37

Question considered:

What provisions of the Senate Code of Official Conduct are applicable to a consultant hired by a Senate committee?

Ruling:

For purposes of the Code of Conduct, an employee of the Senate is defined to include "any employee whose salary is disbursed by the Secretary of the Senate." This definition encompasses consultants and other part-time employees; hence they must adhere to the Code.

If the consultant's initial salary is equal to or in excess of the rate in effect for the GS–16 level of the General Schedule, he or she will be required to submit a public financial disclosure report within 30 days of commencing employment, and on May 15 of each year thereafter.

Two other provisions of the Code apply to a consultant, regardless of the salary level and period of employment. The first is Rule 35 which restricts the acceptance of certain gifts by Senate employees. The second rule applicable to all Senate employees is the conflict of interest provisions of Rule 37, which among other things, requires an employee to report in writing to his supervising Senator before engaging in any outside employment. The Senator is then responsible for taking any necessary action to avoid conflict of interest or interference with Senate duties.

Because the Code places the responsibility for avoidance of conflict of interest on the supervising Senator, this Committee does not ordinarily accept that responsibility in the first instance. For this reason, it is reluctant to review the resume of a consultant and declare that there is or is not a real or apparent conflict of interest. Such judgments require continuing attention to the individual's Senate work assignments and outside activities which the Committee cannot offer.

INTERPRETATIVE RULING NO. 62

Date issued: September 14, 1977

Applicable Rule: 35

Question considered:

May a Senator accept the invitation of the local Chamber of Commerce and other public officials to accompany them, at their expense, to appear before a political party's site selection committee in order to make a presentation urging the committee to hold a party convention within the Senator's home State?

Ruling:

Rule 35 on "Gifts" excludes from the definition of a gift the payment of the "necessary expenses" of travel regarding the Senator's appearance on behalf of an organization, including transportation, food, and lodging, if those expenses are paid by the organization for which the services are performed. Accordingly, the Committee believes that acceptance of an invitation from the Chamber in furtherance of its interests would not be in violation of Rule 35.

INTERPRETATIVE RULING NO. 63

Date issued: September 15, 1977

Applicable Rule: 37

Question considered:

Are Senators, who are retired Military Reservists, in violation of paragraph 4 of Senate Rule 37 (which prohibits one from aiding the progress of legislation intended to benefit a limited class of persons—including a Senator or his immediate family) when they vote for a bill which would affect their pensions by eliminating the limit upon the amount of the pension they could receive while they are Members of the Senate?

Ruling:

The bill referred to affects all present and future retired officers who hold or seek Federal employment. Paragraph 4 of Senate Rule 37 provides that a Member shall not aid the passage of legislation, a principal purpose of which is to further his pecuniary interest or that of a limited class of persons.

The legislative history of paragraph 4 states at page 42 of Senate Report No. 95-49 that:

> Legislation may have a significant financial effect on a Senator because his holdings are involved, but if the legislation also has a broad impact on his state or the nation, the prohibitions of the paragraph would not apply.

The report adds that dairy farmers, shoemakers and disabled veterans are examples of groups that do not constitute a limited class. A limited class would resemble the class of persons affected by a private bill. Thus the Senators did not violate this provision by voting for the bill in question since all present and future retired military officers who hold or seek Federal employment would not constitute a "limited class" as that term is used in Rule 37.4.

INTERPRETATIVE RULING NO. 64

Date issued: September 21, 1977

Applicable Rule: 35

Question considered:

May a Senator who is travelling on official business accept a check for $250 from an airline company in compensation for the difference between the airline's commercial fare and that of a charter he was obliged to take when the airline's equipment broke down? The Senator had intended to claim official reimbursement for the commercial air fare.

Ruling:

The legislative history of Rule 35 on Gifts indicates that the Senate did not intend that travel furnished by a source other than the organization for which a Member performed services incident to official duties should constitute a gift if the Member reimbursed that source in an amount equivalent to the commercial air fare for the flight.

Accordingly, it is proper for the Senator to endorse the airline check over to the charter corporation, and to claim official reimbursement for the difference.

INTERPRETATIVE RULING NO. 65

Date issued: September 26, 1977

Applicable Rule: 35

Question considered:

Has a Senator violated the Code of Official Conduct by reimbursing a corporation in the amount of a commercial air fare after returning to Washington (with family members) on a corporate plane?[1]

Ruling:

The legislative history (Congressional Record, March 31, 1977, p. 5264) of Rule 35 indicates that:

> It is the intent of the sponsors of S. Res. 110 that if a Senator travels on a private airplane owned by a corporation, that transportation is not a gift if the Senator reimburses the owner of the plane for the cost of the equivalent commercial air transportation.

The reimbursement in this case takes the matter outside of the reach of Rule 35 and is in accord with the above statement.

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[1] The method of valuation to be used for reimbursement of corporate travel has been readdressed in Interpretative Ruling No. 412, dated August 11, 1986.

INTERPRETATIVE RULING NO. 66

Date issued: September 26, 1977

Applicable Area: Franking

Question considered:

A non-Senate organization offered its membership mailing list to a Senator for use in an otherwise frankable mass mailing. The non-Senate group refuses to give its list to the Senator but has agreed to place mailing labels derived from the list on pre-sealed envelopes to be supplied by the Senator. Does the statute regulating the use of the mailing frank authorize the Senator to utilize the mailing list under these conditions? [2]

Ruling:

The U.S. Code, Title 39, paragraph 3215 states that a "person entitled to use a frank may not lend it or permit its use by any committee, organization, or association, or permit its use by any person for the benefit or use of any committee, organization, or association . . ." In the view of the Committee, a transfer of franked envelopes, though previously stuffed and sealed by the Service Department, would be precluded by the statute. In this instance, the opportunity for alteration of the material, identification of the organization on the Senate envelopes, delivery to unintended addresses and diversion of the franked envelopes to unintended purposes is so great that the practice would be tantamount to a loan of the frank.

However, there are ways in which an outside organization's mailing list may be used by a Senator. For example, the organization could supply the list to the Senator for preparation and mailing within the Senate. Another method would involve providing blank mailing labels to the non-Senate organization in order that they could fill in the labels and return them to the Senator for mailing.

In both of these cases, care must be taken so that the mailing in no way identifies the non-Senate organization as the sponsor, in whole or in part, of the mailing. Similarly, if the organization normally charges a fee for its mailing list, the customary fee must be paid since the Committee has construed Rule 38 as prohibiting in-kind contributions to defray an expense of holding office. If, on the other hand, the organization does not ordinarily charge a fee, a Senator may accept the list, provided that reimbursement is made to the organization for any costs it incurs in preparing the list to be turned over to the Senator.

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[2] This ruling responds to three separate requests for Committee rulings on this subject.

INTERPRETATIVE RULING NO. 67

Date issued: September 27, 1977

Applicable Rule: 38

Question considered:

Is it permissible under the Senate Code of Official Conduct and the Federal Election Campaign Act for a Senator to use campaign committee funds to pay for his wife's attending a cultural event to represent the Senator in the Senator's home State?

Ruling:

The Act and Senate Rule 38 allow a Member to defray from his excess campaign funds any expenses incurred in connection with his official duties which are not otherwise reimbursed. If the attendance at the event by the Senator's wife is for predominantly political or official purposes, the Senator may use his campaign funds to defray her expenses.

INTERPRETATIVE RULING NO. 68

Date issued: September 27, 1977

Applicable Rule: 40

Question considered:

Does paragraph 2 of Rule 40, which requires that only official Senate funds be used to prepare franked mailings, prevent the use of a voters list, paid for from non-official funds for franked mailings?

Ruling:

Rule 40, paragraph 2, states as follows:

> A Senator shall use only official funds of the Senate, including his official Senate allowances, to purchase paper, to print, or to prepare any mass mailing material which is to be sent out under the frank.

As used in the Rule, the term "prepare" does not extend to the acquisition of mailing lists, but instead encompasses the mechanical aspects of a mass mailing, such as computer processing, addressing, stamping, folding, sorting, or bundling.

INTERPRETATIVE RULING NO. 69

Date issued: September 27, 1977

Applicable Rule: 35

Question considered:

May a staff member designated by the supervising Senator accept, from a privately funded domestic lobbying group, the necessary travel expenses for a trip to Canada to research matters within the purview of the Senator's official duties? The sponsoring group has a clear interest in the matter to be researched by the staff member.

Ruling:

"Fact finding" in connection with matters of direct interest to a Member, his constituents, and the sponsoring organization is a service of public office, the necessary travel expenses for which are excluded from the definition of a "gift" under Rule 35.

Therefore, acceptance of such travel expenses from what would otherwise be a "prohibited source" is permissible in this situation.

INTERPRETATIVE RULING NO. 70

Date issued: September 29, 1977

Applicable Rule: 37

Question considered:

May a Senate staff member engage in the private practice of law in a minor transaction and receive compensation therefor?

Ruling:

Paragraph 5 of Rule 37 on conflicts of interest was intended to severely restrict the practice of any profession (for compensation) by Senate employees. That paragraph states in pertinent part that no Member or (full-time) employee compensated at a rate in excess of $25,000 per annum shall a) affiliate with a firm or partnership, b) permit his or her name to be used by such, or c) "practice a profession for compensation to any extent during regular office hours of the Senate office in which employed." This provision restricts, but also contemplates, some practice outside office hours or on annual leave time. Whether the limited practice proposed in this instance is permissible depends on the facts of each case. They include the nature of one's Senate duties and the amount of time required by such outside activities. Consequently the Code, under paragraph 3 of Rule 37, places the initial responsibility upon an employee's supervisor to determine whether there is a potential for conflict of interest or its appearance and to take such action as is necessary to avoid same.

INTERPRETATIVE RULING NO. 71

Date issued: September 29, 1977

Applicable Rule: 35

Question considered:

May a Senator and his or her spouse accept air travel on a charter flight, arranged by a Member of the House, in order to accompany the Representative to a function at which both the Senator and Congressman are to appear?

Ruling:

The travel on the charter flight does not constitute a prohibited gift under Rule 35 where the owner of the aircraft was not a "prohibited source" for purposes of Rule 35, or where the costs of the air travel were provided by the House of Representatives, or the Congressman who made the charter arrangements. If the Senator was responsible for his share of the charter costs and the owner of the aircraft was a "prohibited source" under Rule 35, a reimbursement of the costs of the charter would have to be made to the owner of the aircraft.

INTERPRETATIVE RULING NO. 72

Date issued: September 29, 1977

Applicable Rule and Area: 38 and Franking

Question considered:

A Senator is planning a statewide conference on small business in his home state as a constituent service, which will include participation by several Federal agencies and the assistance of a state university. The university customarily prints brochures for such conferences without charge. May the Senator accept these brochures without charge and mail them under the frank?

Ruling:

Rule 38 governs accepting services from private sources. The Committee has construed that rule as prohibiting in-kind contributions to defray official expenses. Generally, a Senator would have to reimburse an organization for any services it provides unless such services are customarily provided by the organization to others without charge. Since the university customarily prints brochures for such conferences without charge, the Senator may accept this service without reimbursing the costs involved. Where the proposed mailing does not constitute a mass mailing, the franking laws and regulations do not prohibit the printing of the brochure by the university nor do they preclude a Senator from then having the Senate Service Department fold the brochures and mail them under the frank.

In-kind services provided by Federal Government agencies do not fall into the same category as contributions from private sources and are not prohibited by Rule 38.

INTERPRETATIVE RULING NO.73

Date issued: September 29, 1977

Applicable Rule: 35

Question considered:

Does the definition of a "prohibited source", found at paragraph 1(b) of Rule 35, include an organization such as a college or university which, although it does not itself maintain a separate segregated fund for political purposes or employ a registered lobbyist, does belong to one or more associations that do have such segregated funds or employ such registered lobbyists, such as the National Association of Independent Colleges and Universities, the American Council on Education, or the Association of American Colleges?

Ruling:

Paragraph (1)(b) of Rule 35 defines a prohibited source to include persons, organizations or corporations registered under the Federal Regulation of Lobbying Act of 1946 or corporations, labor organizations or other organizations which maintain a separate segregated fund for political purposes, as defined by section 321 of the Federal Election Campaign Act of 1971.

The definition contemplates an organization that directly maintains a separate segregated fund for political purposes. The definition does not contemplate an organization indirectly involved in lobbying activity only by virture of its membership in one or more associations. The organization does not become a prohibited source because of its associations.

Interpretative Ruling No. 74

Date issued: October 3, 1977

Applicable Rules: 38, 40, and 41

Question considered:

A Senator plans to telephone homes and businesses on a random basis to ask whether the individual or firm is aware of, or has need for, any of the traditional casework or informational services available through a Senate office. A franked form letter is then to be sent to follow up with the person called. Does this proposed activity conform to the Code of Official Conduct and other applicable laws or regulations?

Ruling:

The proposed telephone survey is not prohibited. However, the proposed follow-up form letter would constitute a mass mailing subject to the restrictions on such mailings, including the requirement of Rule 40(2) that ony official funds may be used to prepare the mass mailing. In our opinion, this follow-up form letter is not in "response to a direct inquiry" as that term is used in the exception to a mass mailing. On the other hand, any letter sent to respond to a specific question with information would fall within the response to a direct inquiry exception to the definition of a mass mailing and thus would be frankable. There is no objection to including a reference to a "hot-line." If a questionnaire is used rather than a telephone survey, it may be franked; however, since presumably more than 500 pieces would be involved, this would constitute a mass mailing.

Volunteer workers may be used in this endeavor. While the Committee has construed Rule 38 as prohibiting in-kind contributions of goods and services to defray official expenses, the Committee has determined that this prohibition does not extend to the services of individual volunteers, such as students, Congressional and science fellows, homemakers, senior citizens, and the like, who traditionally have worked in Senate offices both in Washington and in the home state. The Committee noted that paragaph 6 of Rule 41 recognizes that such volunteers are utilized in performing Senate business by subjecting them to the Code of Official Conduct if they perform services full time for more than 90 days in a calendar year.

INTERPRETATIVE RULING No. 75

Date issued: October 3, 1977

Applicable Rules and Area: 34, 35, Federal Election Campaign Act

Question considered:

May a staff member accompanying a Senator to an appearance accept the necessary expenses of travel, offered by the sponsor of the appearance, where the aide's attendance has been requested by the sponsor? The aide will assist the Senator with his preparation for the appearance. Are the expenses of the staff assistant considered part of the honorarium to the Senator for purposes of either the limitation on receipt of honoraria or disclosure requirements?

Ruling:

The financial disclosure statute requires all Members and certain staff to disclose the receipt of all travel-related reimbursement or in-kind provision of travel if its value equals or exceeds $250.

The Federal Election Campaign Act, at section 441(i) of Title 5, USC, applies a per appearance limitation only to net honoraria, thus excluding reimbursement for travel expenses, agents' fees, and excluding the necessary expenses of travel, etc., of an aide who might accompany the Senator in an official capacity.

Rule 35, on Gifts, excepts from the definition of a "gift" the providing of or reimbursement for necessary expenses of travel incident to an appearance before the sponsoring group. This exception applies not only to Members but also to an officer or employee who may accompany the Senator in an official capacity.

INTERPRETATIVE RULING No. 76

Date issued: October 5, 1977

Applicable Rule: 35

Question considered:

May a Member, officer or employee of the Senate accept the invitation of a long-time personal friend, who is an officer of a corporation which is a prohibited source (as defined in paragraph 1(b) of Rule 35), to visit a hunting lodge for a vacation of several days when the value is assumed to be in excess of $100 under *any* of the following circumstances:

A. If the host leases the lodge from the corporation for this particular hunt?

B. If the Member or employee makes a reasonable reimbursement of the expenses incurred, either to the corporation or the host (if the latter leased the lodge)?

C. In determining whether the aggregate value of the gift exceeds $100, the value of similar entertainment furnished by the Member or employee may be deducted, and

D. The above questions would be answered differently if the host were owner or lessee of the lodge rather than the corporation, and

E. If the gift can be accepted, must the gift be disclosed?

Ruling:

Rule 35 prohibits the acceptance of such an invitation if the corporation owns or leases the premises.

The Member or employee cannot accept the invitation if the host leases the facilities from the corporation for this hunt because the legislative history of Rule 35 (Senate Report No. 95-49, page 35) indicates that "personal hospitality" consists of food, lodging and entertainment while a guest in the host's personal residence.

The Member or employee may accept the invitation under (b) if he reimburses the proper party (whoever is paying the expenses) for his share of the expenses. No gift would then be involved.

Under Rule 35 the "personal hospitality" reciprocated by a Member or employee may not be deducted by the Member or employee in determining whether gifts exceed $100 or have been received during a calendar year from a prohibited source.

With respect to (d) if the host is the owner, or lessee of the premises under a lease unrelated to his employment, acceptance of such an invitation can qualify as "personal hospitality."

With respect to (e) those invitations which would qualify as personal hospitality need not be reported under Rule 34.

INTERPRETATIVE RULING NO. 77

Date issued: October 10, 1977

Applicable Rule: 37

Question considered:

May a Senate staff member write a paper for a White House Conference for a fee without violating any Senate Rule?

Ruling:

Writing a paper for a fee in and of itself does not violate paragraph 3 of Senate Rule 37. The employee's supervisor must approve the outside activity. The facts presented suggested no apparent reason why approval should not be granted. The receipt of such a fee does not violate the Dual Compensation Act which excludes "pay consisting of fees paid on other than a time basis."

INTERPRETATIVE RULING NO. 78

Date issued: October 11, 1977

Applicable Area: Franking

Question considered:

May an otherwise frankable newsletter contain a photograph from a newspaper (which conforms with chapter two, paragraph 15 page 10 of the franking regulations) when permission for its use was conditioned upon a credit to the photographer and identification of the newspaper?

Ruling:

No provision of 39 U.S.C. 3210 et seq., as amended, or of the *Regulations Governing the Use of the Mailing Frank* by Members and officers of the United States Senate promulgated by the Select Committee prohibits the use of a newspaper photograph or the credit line referred to above.

Provided that the Senator has received the necessary permission of the newspaper, there is no violation of the Code of Conduct for including such a photograph in a newsletter to be mailed out using the frank.

INTERPRETATIVE RULING NO. 79

Date issued: October 11, 1977

Applicable Rules: 34 and 35

Question considered:

May Senate staff employees accept travel expenses from a potential employer for the purpose of a job interview?

Ruling:

Paragraph 2(a) of Rule 35 excludes from the definition of a gift the "necessary expenses" of travel, food, and lodging for purposes of the prohibition upon accepting gifts in excess of $100 from prohibited sources. The Select Committee has determined that the necessary expenses for the purpose of a job interview, if paid by the prospective employer, may be accepted under this exception to the definition of a gift. If the staff employees are required to file annual financial disclosure statements, the acceptance of these expenses should be reported as the recipient of a reimbursement if it is worth more than $250.

INTERPRETATIVE RULING NO. 80

Date issued: October 12, 1977

Applicable Rule: 35

Question considered:

May a Senator and his wife accept private round trip air transportation between his home state and the site of a speaking engagement and commercial transportation back to Washington when the sponsoring corporation has a registered lobbyist and a political action committee and is, therefore, a "prohibited source" of "gifts" under Rule 35? Private air transportation is necessary because of the remoteness of the site of the speaking engagement.

Ruling:

The Rule 35 prohibition on accepting gifts from sources with an interest in legislation does not apply to accepting "necessary expenses" of travel in connection with speaking engagements where the sponsor is providing the expenses. Under these circumstances, it is appropriate for the Senator to accept the travel.

Where the Senator's wife accompanies the Senator to the speaking engagement, and the predominant purpose of her attendance is not for social or personal purposes, then accepting travel for her would also be appropriate. Otherwise, accepting her travel expenses would constitute a "gift" subject to the restrictions of Rule 35.

INTERPRETATIVE RULING No. 81

Date issued: October 19, 1977

Applicable Rule: 35

Question considered:

May a Senator accept a gift from the county committee of a political party?

Ruling:

Rule 35 prohibits accepting gifts aggregating more than $100 in a calendar year from a source with a "direct interest in legislation before the Congress", as defined in the Rule. However, the Committee ruled that a county committee of a political party is not such a "prohibited source". Hence, a Senator may accept gifts from such an organization, regardless of the value. However, any such gifts aggregating more than $100 a year must be disclosed under Rule 34.

For purposes of determining the value of a gift, both for the Rule 35 restrictions and for disclosure purpose, the Committee also ruled that the individual receiving a gift must make a good faith effort to determine its fair market value, which may not necessarily be the retail or actual cost.

INTERPRETATIVE RULING No. 82

Date issued: October 28, 1977

Applicable Rule and Statute: 35, Foreign Gifts and Decorations Act

Question considered:

May a Senate employee who has been selected by a domestic firm to participate in an overseas lecture tour, sponsored by a political subdivision of the foreign government and administered by a public university, accept payment from the domestic firm and honoraria totalling $500 in connection with the lecture tour?

Ruling:

Assuming that the domestic firm is not acting as an agent for a foreign government, the acceptance of such payment would violate neither Senate Rule 35 on Gifts nor the Foreign Gifts and Decorations Act (5 U.S.C. 7342).

INTERPRETATIVE RULING NO. 83

Date issued: November 1, 1977

Applicable Rule: 37

Question considered:

A professional staff member has applied to a university for a position as the principal investigator under a research grant. The university is applying to the National Science Foundation for the grant.

May the staff person allow the university to name him as the principal investigator in its application for the grant?

Facts:

The staff member's employing committee has no jurisdiction over the National Science Foundation. The staff member would not receive a fee for the use of his name in the application and he would have no part in the award of the contract. He would resign from the committee staff prior to the effective date of the grant.

Ruling:

The Code of Official Conduct does not prohibit the use of the Senate employee's name under these conditions. Under paragraph 1 of Rule 37, the staff member should take care not to exert or appear to exert improper influence in connection with the application. The employee is not required by paragraph 3 of Rule 37 to report the application to his supervising Senator because the employment is prospective and predicated on the employee's resignation. For the same reason the supervising Senator has no responsibility to review or approve the application.

INTERPRETATIVE RULING NO. 84

Date issued: November 3, 1977

Applicable Area: Nepotism Statute

Question considered:

May a Senator's reelection campaign staff hire a relative of the Senator?

Ruling:

No violation of the Senate Code of Official Conduct would occur. We note that the U.S. Code provision on nepotism (5 U.S.C. 3110) would preclude a Senator from hiring a relative to be paid by the Senate, but does not prevent hiring a relative for a campaign staff.

INTERPRETATIVE RULING NO. 85

Date issued: November 8, 1977

Applicable Rules: 34 and 35

Question considered:

May a Senator provide, out of his personal funds, a paid vacation to an employee in recognition of that employee's long service?

Ruling:

Such a gift may be made by a Senator and accepted by an employee without conflict with the Code of Conduct. However, if the employee is required to submit a public financial disclosure report, the source and value of such gift must be disclosed.

INTERPRETATIVE RULING NO. 86

Date issued: November 8, 1977

Applicable Rules: 37 and 41

Question considered:

Can a staff member designated under Senate Rule 41 to solicit contributions be employed as a consultant by a state party organization for the purpose of assisting with developing and implementing its fundraising activities?

Ruling:

Under Rule 37, paragraph 3 on Conflict of Interest, the initial responsibility for determining that this proposed outside professional activity does not conflict with the employee's conscientious performance of his Senate duties rests with his supervisor (i.e., his supervising Senator). The Committee suggested that perhaps he could render his consulting services after Senate office hours, over weekends or while on annual leave.

INTERPRETATIVE RULING NO. 87

Date issued: November 14, 1977

Applicable Area: Dual Compensation Act

Question considered:

An individual will work as an academic intern for a Senate subcommittee and receive a salary of $500 per month. At the same time the individual will receive a fellowship stipend of $350 per month from the Health Policy Program of a medical school. The stipend will be from an account derived from private sources and not appropriated funds of the Federal Government. The individual will have no obligations to the program, which provides individuals with opportunities to gain health policy experience.

Ruling:

Under these circumstances there is no conflict with the Senate Code of Official Conduct. Committee staff discussed the dual compensation implications of such an arrangement with the Senate Disbursing Office and were informed that there is no violation of the Dual Compensation Act (5 U.S.C. 5533) as long as the stipend is not derived from money provided by the Federal Government.

INTERPRETATIVE RULING NO. 88

Date issued: November 16, 1977

Applicable Rule: 41

Question considered:

May a staff member attend (on his own time) a fundraiser to benefit his employing Member's campaign while the staff member is in an official travel status? Extra travel expenses incident to attending the fundraiser will be paid by the Member's political campaign committee.

Ruling:

Although the staff member cannot make a direct contribution to a Member of Congress (and thus cannot attend as a paying guest), nothing in the Code of Official Conduct prohibits the staff member from attending the fundraiser on his own time provided he does not engage in the solicitation or handling of campaign funds prohibited by Rule 41 (unless properly designated). The fact that the staff member is in an official travel status has no bearing on this ruling. It is appropriate for a campaign committee to bear the expense of the additional travel expense incident to attending the fundraiser.

INTERPRETATIVE RULING NO. 89

Date issued: November 21, 1977

Applicable Rule: 35

Question considered:

A Senator's "necessary travel expenses" are to be paid by the organization sponsoring his appearance: May the organization also pay for expenses related to another appearance? When two different sponsoring organizations in the same area offer to pay "necessary travel expenses" for the Senator's trip to that area, may the Senator accept both offers so a staff member may accompany him?

Ruling:

A Member, officer or employee may accept necessary travel expenses from the organization sponsoring his or her appearance. These expenses are not considered a gift for purposes of the Rule 34 report requirements and the Rule 35 limitations on gifts.

When a second appearance requires additional expense, such as an extra night's lodging, it may not be paid by the sponsor of the first appearance, since it is not an expense necessary for that appearance. An extra expense of this kind should be paid by the sponsor of the second appearance.

The second question assumes that two different sponsoring organizations offer to pay travel expenses for two separate appearances in the same area. The question is whether the Senator may accept both offers of travel expenses so a Senator's staff member can also attend for official purposes. There is no objection to this under the Code of Official Conduct if it is done with the knowledge and agreement of the sponsors. The Senator may not accept double payment for the same expenses, but may accept payment from the two sources for expenses of himself and a staff member as long as the expenses are necessary and the attendance of the staff member at one of the events is for official purposes.

INTERPRETATIVE RULING NO. 90

Date issued: December 1, 1977

Applicable Rule: 37

Question considered:

Can a committee staff person serve on a state citizen's advisory board, if its activities do not involve matters with which the subcommittee is concerned?

Ruling:

Under paragraph 3 of Rule 37 on Conflict of Interest, employees of the Senate may engage in limited business and professional activity provided that prior to the commencement of any such activity, his or her supervisor determines that there is no conflict of interest and that the activity will not interfere with Senate duties. On each May 15, as long as the activity continues, the employee must report that fact in writing to his or her supervisor.

In this case, although the procedure set forth was followed, apparently there remained some doubt in the supervisor's mind as to whether the Code of Official Conduct would permit such service. The Committee noted that the responsibility for ensuring no conflict arises rests initially with the supervisor. Since the supervisor had requested guidance, the Committee reviewed the situation and determined that on the facts presented, no conflict was apparent since the State board was not involved with matters of concern to the supervising Senator's subcommittee.

INTERPRETATIVE RULING NO. 93

Date issued: January 4, 1978

Applicable Rule: 37

Question considered:

May the expert transcribers who are on the staff of the Official Reporters of Debates perform transcribing services for commercial reporters in non-federal cases while the Senate is in recess or after Senate hours?

Ruling:

Paragraph 6 of Senate Rule 37 states that no employee compensated at an annual rate in excess of $25,000 shall "affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation."

For the purposes of this paragraph, "professional services" shall include but not be limited to those which involve fiduciary responsibilities.

While the transcribers in question have expertise in Senate procedure and have exceptional background in grammar, English usage and punctuation, the extent of their fiduciary duty is to transcribe a true and accurate statement. The Committee is of the opinion that the transcribers are not prohibited from offering their professional services for compensation in their off-duty hours, as this rule is primarily designed to limit the practice of law, medicine, architecture, and other traditional professions.

INTERPRETATIVE RULING NO. 94

Date issued: January 24, 1978

Applicable Rule: 35

Question considered:

May a group of Senate staff, which meets weekly to exchange views on legislative matters, accept coffee and doughnuts paid for regularly by an organization engaged in lobbying the Congress?

Ruling:

While it is probable that no Senate Rule would be violated, the Committee is concerned that such an arrangement between a committee staff and an interest within its jurisdiction could reflect discredit upon the Senate.

INTERPRETATIVE RULING NO. 95

Date issued: January 30, 1978

Applicable Area: Franking

Question considered:

May a Senator use the frank to return a gift which he or she is prohibited from accepting under the Code of Conduct?

Ruling:

The frank may be used to return such gifts since the frank is, by the intent of Congress, available to assist and expedite the conduct of official business of the Senate, including implementation of the Code of Conduct.

INTERPRETATIVE RULING NO. 96

Date issued: January 30, 1978

Applicable Rule: 40

Question considered:

May the Secretary of the Senate charge a reasonable copying fee under Rule 40 for copying mass mailing material registered with the Secretary of the Senate?

Ruling:

The Committee interprets Rule 40 to have granted the Secretary the implied power to charge a reasonable copying fee not to exceed those fees charged for copying materials on file pursuant to Rule 34.

INTERPRETATIVE RULING NO. 97

Date issued: February 8, 1978

Applicable Rule: 37

Question considered:

May a staff lawyer assigned to a subcommittee join a local bar association subcommittee which intends to lobby the staff member's subcommittee with respect to pending legislation?

Ruling:

The primary responsibility for preventing any conflict of interest or the interference of outside activities with Senate duties rests with the staff member's supervisor pursuant to Rule 37.3. While there is nothing in the Code of Official Conduct which would preclude his membership in the bar association subcommittee, the Ethics Committee believes that such membership could result in an appearance of a conflict of interest and that the more prudent choice would be to refrain from such membership.

INTERPRETATIVE RULING NO. 98

Date issued: February 13, 1978

Applicable Rules: 34 and 35

Question considered:

May a Senator accept a flight on an airplane operated by his State from Washington to the State for the purpose of introducing an administration official to a non-profit organization of local officials and private engineers?

Ruling:

As the State is not a "prohibited source" under Rule 35, the Senator may accept the transportation in question. It must be reported as a "gift" under Rule 34 unless the organization reimburses the State for the value of the trip, or the value of this trip and all other gifts accepted by the Senator from the State during the calendar year in the aggregate are less than $100.

INTERPRETATIVE RULING No. 99

Date issued: February 16, 1978

Applicable Rule: 37

Question considered:

May a professional staff member serve on an advisory panel of an institute with an area of interest that is within that of the Committee on which the staff member serves?

Ruling:

The Committee was of the opinion that the staff member should not serve on the panel so long as the institute retained a registered lobbyist and intended to engage in lobbying concerning pending legislation. The institute later advised the Committee that they had terminated all lobbying activities and intended only to monitor the progress of pending legislation. Therefore, the Committee has determined that the Code would not be violated. Paragraph 3 of Rule 37 requires the supervisor to ensure that no conflict arises in the future.

INTERPRETATIVE RULING No. 100

Date issued: February 23, 1978

Applicable Rule: 40

Question considered:

Is the restriction on the use of the frank for mass mailings and use of the Senate Recording Studio for 60 days prior to "any primary or general election" applicable to a State party convention which has authority to nominate a candidate for the Senate?

Ruling:

The Committee has concluded that the definition of a "primary or general election (whether regular, special, or runoff)" does include a party convention. This decision is in accord with the definition of an "election", previously adopted by the Congress in the Federal Election Campaign Act Amendments of 1976 (P.L. 94-283), which defines an election to include "a convention or caucus of a political party which has authority to nominate a candidate . . ." (Title 2, Chapter 14, section 431 of the Federal Election Campaign Act). Under the law of the State in question, the convention does have such authority.

As it was originally enacted, the Federal Election Campaign Act of 1971 defined an "election" as including "a convention or caucus of a political party held to nominate a candidate." Thus, the Congress, through the FECA amendments of 1976, acted to expand the definition to include not only party coventions and caucuses which *act* to nominate a candidate, but also conventions and caucuses which have the *authority* to make such nominations.

Thus, the restrictions of Rule 40, as they apply to mass mailings under the frank and use of the Senate Recording Studio 60 days prior to "any primary or general election . . .", are applicable to this situation, including a subsequent primary, if any, and the general election.

INTERPRETATIVE RULING NO. 101

Date issued: February 23, 1978

Applicable Rules: 34 and 35

Question considered:

May a Senator use several passes which were given to him by local entertainment establishments?

Ruling:

Rule 35 of the Senate Code of Offical Conduct prohibits accepting gifts that have an aggregate value of $100 or more from, among others, persons or organizations which have a "direct interest in legislation before the Congress," which is defined in subparagraph 1(b) as persons, organizations or corporations which are registered under the Federal Regulation of Lobbying Act or which maintain a separate segregated fund for political purposes as described in the Federal Election Campaign Act, 2 U.S.C. 441(b).

A Senator may use these passes, regardless of their value, if they were given by a "non-prohibited source," i.e., not one of the persons or organizations defined above. If these passes were provided by a "prohibited source," they may not be used if the value of all gifts accepted from the prohibited source is greater than $100 in a calendar year. In determining the $100 limitation, a recipient need not aggregate gifts of less than $35 from such a source. As to gifts from non-prohibited sources, they must be reported under Rule 34 if the gifts aggregate more than $100 in value from the same source in a calendar year, excluding gifts valued at less than $35.

INTERPRETATIVE RULING NO. 102

Date issued: March 3, 1978

Applicable Rule: 41

Question considered:

A Senator is using personal funds to hire a consultant to study his office operations. Do any reports have to be submitted concerning the arrangement?

Ruling:

Paragrpah 6 of Rule 41 requires the supervising Senator to report to the Ethics Committee on the utilization of the services of an individual (if the services were rendered to any Member, committee or office of the Senate for a period in excess of 4 weeks) when the individual providing the services is compensated by a source other than the United States Government. The reports are required:

(1) when such individual begins performing the services;

(2) at the close of each calendar quarter while such individual is performing such services; and

(3) when such individual ceases to perform such services.

Each report must incude the identity of the source of the compensation received by such individual and the amount or rate of compensation paid by such source. The Committee has a form available for these reports.

INTERPRETATIVE RULING NO. 103

Date issued: March 6, 1978

Applicable Rule: 37

Question considered:

May a senate employee join the board of a tax-exempt corporation which has as its principal purpose the publication of a newsletter summarizing state and federal election campaigns?

Ruling:

Paragraph 6(a) of Rule 37 permits board service of this type so long as the service does not conflict or interfere with the conscientious performance of Senate duties. In this case the Committee was informed that the time involved would be minimal (quarterly board meetings). The responsibility to ensure that no conflicts arise in the future rests with the employee's supervising Senator, who must be informed of this outside activity.

In cases where the business of the tax-exempt corporation is similar to that of the employee's committee assignment or area of responsibility, the Ethics Committee has advised against the employee accepting such a position. No such conflict appears to exist in the present case.

INTERPRETATIVE RULING NO. 104

Date issued: March 7, 1978

Applicable Area: Franking

Question considered:

Does a Member's photograph on the masthead of a newsletter count as one of the four pictures of the Member permitted under paragraph 12 of Chapter Two of *The Regulations Governing the Use of the Mailing Frank?*

Ruling:

Title 39 U.S.C. Section 3210(a)(3)(J) of the franking statute authorizes the franking of a newsletter containing photographs of a Member as long as the size and frequency do not lead to the conclusion that the purpose is to advertise the Member rather than illustrate the accompanying text.

The use of the masthead photograph is a long-standing practice that the Committee believes should be permitted to continue, and such a photograph would not count as one of the four photographs permitted in a franked newsletter.

INTERPRETATIVE RULING No. 105

Date issued: March 9, 1978

Applicable Rule: 35

Question considered:

May a staff person participate in separate programs on consecutive dates in two foreign countries, the necessary expenses of the first program being borne by a domestic (U.S.) sponsor and the expenses of the second by a foreign education organization?

Ruling

While paragraph 1(a) of Rule 35 on Gifts prohibits Members, officers, and employees of the Senate from accepting gifts having a value in excess of $100 from a prohibited source and from foreign nationals, the "necessary expenses of travel" are excepted from the definition of gift under paragraph 2 of the Rule.

The legislative history of the Rule indicates that the necessary expense of travel mean transportation, food, lodging and entertainment in connection with an appearance incident to official duties if furnished or paid for by the sponsoring entity. The legislative history does not differentiate between foreign and domestic travel paid for by a domestic organization.

The Rule itself bars the furnishing of, or payment for, travel by foreign nationals, except as provided by paragraph 4 of the Rule where the principal objective of the travel is educational, sponsored by a foreign education organization, and the Select Committee on Ethics has determined that participation in such program is in the interests of the Senate and the United States, and proper notice is published in the *Congressional Record.*

The facts of the instant case state that there are two separate but related sponsoring organizations for two separate but related program in different countries. The domestic organization will pay for travel to and from Country A (plus food and lodging) for purposes of its program. The foreign organization will pay for travel, food and lodging for purposes of its program in Country B.

The supervising Member indicated that he was of the opinion that both programs were related to the official Senate duties of the staff person and that attendance was in the interest of the Senate. The State Department advised the Committee that the foreign sponsor was an educational organization within the meaning of paragraph 4(a) of Rule 35.

The Committee found that participation in these programs was in the interests of the Senate and the United States and the acceptance was approved as being within the purview of Rule 35.

INTERPRETATIVE RULING NO. 107

Date issued: March 21, 1978

Applicable Area: Nepotism

Question considered:

May a Senator appoint the son of another Senator to a Senate post at the latter Senator's request?

Ruling:

The federal anti-nepotism law (5 U.S.C. 3110) provides that an individual may not be employed in a government agency if his employment has been advocated by a public official serving in that agency who is a relative of the prospective employee. Under the circumstances, the Senator's son thus would be precluded from being appointed to the post in question.

INTERPRETATIVE RULING NO. 109

Date issued: March 23, 1978

Applicable Rule: 37

Question considered:

May a full-time employee on Member's staff working in a district office serve, if elected, as a compensated member of the state legislature and continue to be a Senate employee?

Ruling:

Paragraph 3 of Rule 37 on Conflict of Interest states that no officer or employee shall engage in any outside business or professional activity or employment for compensation unless he has reported to his supervisor, in writing, when such activity commences and on each May 15th thereafter so long as it continues. The supervisor shall take such action as he considers necessary for the avoidance of a conflict of interest or interference with the staff member's duties to the Senate.

The Committee cannot predict whether, in fact, this outside activity will result in actual conflict of interest in connection with a particular issue or will interfere with the performance of Senate duties.

It was stated that in addition to time away from Senate duties while campaigning, the legislature meets on four afternoons each week for four months of the year. The supervisor advised the employee that he would monitor the situation and consider whether a salary adjustment or restriction of Senate duties would be appropriate.

The Committee concluded that this approach to the matter is in conformity with paragraph 3 of Rule 37.

INTERPRETATIVE RULING NO. 111

Date issued: April 5, 1978

Applicable Rule: 41

Question considered:

Dose the Senate Code of Official Conduct place any restrictions upon the use of interns?

Ruling:

The Code of Conduct was not intended to limit a Senator's ability to utilize interns. The Code of Conduct contains no specific reference either to interns or to internship programs. However, paragraph 4 of Rule 41 does provide that a Senator may not utilize the full-time services of an individual for more than ninety days in a calendar year unless the individual agrees in writing to comply with the Senate Code of Official Conduct in the same manner and to the same extent as employees of the Senate.

Thus, an intern who worked for a Senator or for a Senate committee on a full-time basis for over ninety days would have to agree to abide by the provisions of the Code of Conduct, some of which apply to all Senate staff and others of which apply only to individuals paid in excess of a specified rate.

INTERPRETATIVE RULING NO. 112

Date issued: April 7, 1978

Applicable Area: Franking

Question considered:

(1) May the frank be used to send an autographed picture of a Senator in his former occupation in response to a request for the picture; and

(2) May the frank be used to send an autographed picture along with a written response on a legislative matter; and

(3) May the frank be used to return an item which was sent to the Senator with a request for an autograph?

Ruling:

Title 39 U.S.C. 3210(a)(3)(J) provides that frankable mail includes mail matter "which contains a picture, sketch or other likeness . . . and which is so mailed as a part of a Federal publication or in response to a specific request therefor . . . " Thus, the statute specifically allows use of the frank on autographed photographs when in response to a specific request and, by implication the statute allows for the return of items having been autographed as requested. The statute does not appear to allow either autographed items or photographs to be routinely sent along with other franked mail absent a specific request for such an item.

INTERPRETATIVE RULING NO. 113

Date issued: April 7, 1978

Applicable Rule and Area: 40 and Franking

Question considered:

(1) Is a mailing consisting of more than 500 "robo letters", which are being mailed to persons in response to their inquiries or requests, a mass mailing for the purposes of Rule 40?

(2) Is a mass mailing limited to 500 pieces, in which the content is substantially identical, mailed in any one day? Does the addition of printed material, such as the reprint of a floor statement, transform a letter into a mass mailing?

Ruling:

(1) There is a specific statutory exception to the definition of mass mailings for a mailing, regardless of the number of pieces mailed, which is "in direct response to inquiries or requests from the persons to whom the matter is mailed." (39 U.S.C. 3210(a)(5)(D)). Subsequent letters mailed in response to an initial inquiry are not in "direct response" within the meaning of this provision and are therefore subject to the requirements imposed under Senate Rule.

(2) According to the Regulations promulgated by the Committee on Standards and Conduct, this Committee's predecessor committee, a mass mailing is defined as a newsletter or similar mailing of more than 500 pieces, in which the content is substantially identical, mailed or delivered to a postal facility in a single day. The addition of printed material does not, of itself, make mailing material a mass mailing; rather the question of whether a particular mailing constitutes a mass mailing turns on the number of pieces mailed, the similarity of the contents, and whether the mailing is initiated by the Senator or is being sent in direct response to an inquiry or request.

INTERPRETATIVE RULING NO. 115

Date issued: April 7, 1978

Applicable Rule: 38

Question considered:

Does Rule 38 on Unofficial Office Accounts prohibit a newspaper in a Member's State from conducting a poll of his constituents to determine their views, for the Member's guidance, on the Panama Canal Treaties?

Ruling:

Rule 38 provides substantially that expenses incurred by a Member in connection with his official duties shall be defrayed with funds from four specific sources, none of which is applicable in this case.

The Committee views a poll such as this conducted by a newspaper to be a public service and as such neither to be a gift to the Member nor prohibited by Rule 38 as an "in-kind contribution".

INTERPRETATIVE RULING NO. 117

Date issued: April 28, 1978

Applicable Rule: 40

Question considered:

Rule 40, paragraph 4(b), exempts from the restrictions on mass mailing any mailing under the frank which is "addressed to colleagues in Congress or to government officials (whether Federal, State or local)." What does the term "government officials (whether Federal, State or local)" mean?

Ruling:

The Committee has determined that the definition of "government officials (whether Federal, State or local)" is as follows:

> Government officials (whether Federal, State or local) include any elected or appointed official of the United States and of any state or territory or a political subdivision thereof.

INTERPRETATIVE RULING NO. 118

Date issued: April 15, 1978

Applicable Rule: 40

Question considered:

Is the sixty-day moratorium on franked mass mailing complied with if a newsletter leaves the Senate Post Office no later than midnight of the sixty-first day before an election?

Ruling:

Rule 40 requires that the mass mailing be delivered to any postal facility no later later than sixty days prior to a primary or general election. Thus, delivery by midnight of the sixty-first day before the election would be in compliance with Rule 40.

INTERPRETATIVE RULING NO. 119

Date issued: April 17, 1978

Applicable Rule: 37

Question considered:

May a staff member of a Senate subcommittee serve as a part-time consultant for a scientific research academy? The position would involve providing consultation on legal and legislative matters, and would not require attention during regular Senate working hours.

Ruling:

Rule 37, paragraph 5, on Conflict of Interest prohibits employees of the Senate (who are compensated at a rate in excess of $25,000 per year and employed more than ninety days in a calendar year) from practicing a profession for compensation during regular Senate working hours. Paragraph 3 of Rule 37 requires that all Senate employees report compensated outside activities to supervising Senators and imposes upon the supervisor responsibility for the avoidance of conflict of interest by employees.

INTERPRETATIVE RULING NO. 120

Date issued: April 20, 1978

Applicable Area: Franking

Question considered:

Is a newsletter frankable which includes numerous "personal references" to the Senator as well as numerous recitations of personal experiences of the Senator?

Ruling:

The Committee determined that the content of the newsletter, if revised to eliminate all personal references in excess of an average of eight per page, would be in conformity with the franking statute and regulations.

The Committee also cautioned that the mailing of many such newsletters which recounted experiences of a Member might be perceived as being either personal or political. Such a pattern might be found unfrankable under 39 U.S.C. 3210 (a)(4), (a)(5)(A) and (a)(5)(B)(ii).

INTERPRETATIVE RULING NO. 121

Date issued: April 26, 1978

Applicable Rules: 35, 37, and 41

Questions considered:

(1) Must a corporate executive who is a participant in the Congressional Assistant Program of the Conference Board be required to sign an agreement to comply with the Senate Code of Official Conduct under Rule 41, paragraph 4? If so, may a waiver be granted from this requirement?

(2) Must a participant in the Congressional Assistant Program of the Conference Board who is assigned to a Senate Committee divest himself of substantial holdings affected by the actions of the committee to which he is assigned?

Ruling:

Paragraph 4 of Rule 41 prohibits any Member, officer or employee of the Senate from utilizing the full-time services of any individual for more than 90 days in a calendar year unless his salary is disbursed by the Secretary of the Senate, he is an officer or employee of the Federal Government (other than the Senate) or unless he agrees to comply with the Code of Official Conduct. Paragraph 5 allows the Committee to grant waivers from any provision of the Code only to employees hired on a per diem or consultant basis. Thus, except in certain limited situations under Rule 35 concerning gifts (which must be approached on a case-by-case basis), the Committee has no authority to waive the requirement that this individual comply with the Code of Official Conduct.

In response to the question concerning the applicability of Rule 37, paragraph 7, on Divestiture, the Committee has determined that the provisions of that paragraph do not cover this individual as that Rule applies only to actual committee staff members.

INTERPRETATIVE RULING NO. 123

Date issued: May 23, 1978

Applicable Rules: 35 and 37

Question considered:

May a Senate employee and his spouse take part-time employment as travel agents and accept complimentary accommodations from various hotels and airlines as part of the travel industry's promotional effort to induce travel agents to book clients with these establishments?

Ruling:

Every Senate employee is required to inform his employing Senator whenever he proposes to engage in any non-Senate business activity. The employing Senator must then determine that outside commitments of his staff do not involve any conflict of interest or interfere with the conscientious performance of Senate duties.

On the question of whether the employee and spouse may accept the complimentary accommodations, pararaph 2(a) of Rule 35 provides an exception to the definition of a "gift" where "consideration of equal or greater value is received" by the donor. This exception would appear to apply in this case since the travel agency, which selects the recipient of the complimentary accommodation, receives consideration of an equal or greater value from the services of the staff member. In addition, paragraph 2(a)(7) of Rule 35 exempts "gifts" made to the spouse of a Senate employee by the spouse's employer "in recognition of the service provided by such spouse. . . ."

INTERPRETATIVE RULING NO. 124

Date issued: May 5, 1978

Applicable Rules: 34 and 35

Question considered:

May a Senator who is planning to speak to a foundation accept hotel lodging for himself and his wife when the hotel accommodations have been made available to the foundation by the hotel and the foundation has the discretion to decide who may use the rooms?

Ruling:

The "necessary expenses" of travel provided by the sponsor of an event would not constitute a gift under the limitations of Rule 35 where the sponsor of the Senator's appearance makes arrangements to have a hotel room made available to the Senator. Therefore, the foundation, as sponsor of the event, may provide a hotel room to the Member and his wife.

Rule 34 (Title I of the Ethics in Government Act) requires that, if the value of the lodging provided was more than $250 or, if within the calendar year, including the value of the hotel room, the foundation had provided more than $250 in reimbursements of the Senator's travel-related expenses, then the providing of the hotel room must be reported on the Senator's annual financial disclosure statement.

INTERPRETATIVE RULING NO. 125

Date issued: May 25, 1978

Applicable Rule: 34

Question considered:

Under the financial disclosure requirements of Rule 34, how should the following property interests be reported and evaluated?

(1) an undivided interest in several pieces of real property purchased on an installment basis, in part with cash, and the balance financed by a non-recourse loan against the property itself;

(2) a limited partnership in several real estate holdings which are secured solely by the land involved.

Ruling:

In the case of co-ownership of the undivided real property interests, the reporting individual's interests would be reported under the real property section, using as a method of valuation: an appraisal; the assessed value for tax purposes; the purchase price of the interest (i.e., the reporting individual's share of the down payment and the note) and date of purchase; or a good faith estimate of the value of the interest on December 31 of the preceding calendar year. Under the liability section, the reporting individual's share of the notes involved would be reported, since he is personally obligated to pay his share of installments on the notes when due in order to avoid foreclosure and loss of the properties.

In the case of the limited partnerships in real estate ventures, these interests should be reported under the property section, and may, by virtue of section 102(c)(2) of the Act, utilize the purchase price and date of purchase as a method of valuation of the reporting individual's interests. The other valuation methods mentioned above may also be utilized. The resulting values should be reported by their appropriate categories of value. A limited partner who is not personally liable on the notes for certain properties would not be required to report any personal liabilities for these interests.

INTERPRETATIVE RULING No. 126

Date issued: May 5, 1978

Applicable Rule: 37

Question considered:

Is there a conflict of interest presented by a staff member in a Senator's state office serving as an uncompensated member of the board of a local Chamber of Commerce during the time when the Chamber will be administering a federal grant to create an economic development plan for that locality?

Facts:

The supervising Senator has no committee assignments that would involve him in oversight of, or appropriations for, the federal agency providing the grant in this case.

Ruling:

The facts presented do not seem to indicate a conflict of interest under Rule 37. However, paragraph 3 of Rule 37 requires that the supervising Senator take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate.

INTERPRETATIVE RULING No. 127

Date issued: May 12, 1978

Applicable Area: Franking

Question considered:

A Senator had the Service Department prepare a large number of reprints from the *Congressional Record* and had his frank included on the printed material for mailing to constituents. A quantity of the reprints remained after the mailing was completed, and the Senator asked whether the unused reprints could be given to a state medical association for distribution to its members and other interested individuals.

Ruling:

Title 39 of the U.S. Code, section 3215 prohibits any person who is entitled to use the mailing frank from lending the frank or permitting the use of the frank by any other committee, organization, or association or from permitting another individual to use the frank for the benefit of such a committee, organization, or association. The Committee believes that because the opportunity for alteration of the material, misuse of the frank, or misidentification of the actual sponsor of the mailing is so great, franked material may not be processed, mailed, or distributed by an outside organization.

On this particular situation, the Committee ruled that if the Senator's frank were obliterated from the reprint prior to delivery to the medical association, the prohibition on the loan of the frank would not be applicable.

INTERPRETATIVE RULING NO. 128

Date issued: May 12, 1978

Applicable Rule: 37

Question considered:

A Senator is writing a book and wishes to utilize the services of a staff member as a consultant to the project. The Senator proposes to retain the aide on the Senate payroll at the minimum figure established by the Secretary of the Senate which will still entitle the aide to health and life insurance benefits. The aide will perform services, commensurate with his reduced salary, in the Member's office during Senate business hours. Work on the book will be undertaken during non-Senate hours. Would this arrangement conflict with Code of Official Conduct?

Ruling:

Because the Senate payroll regulations do not provide for a "leave without pay" status, and because the Senate's health and life insurance programs are tied to the payroll regulations, a Senate employee must terminate his insurance protection if he leaves the payroll. In this instance, the Committee ruled that this aide could be retained on the payroll at the minimum level which would entitle him to insurance coverage, provided that the aide would continue to perform services, commensurate with his reduced salary, in the Senator's office during regular Senate business hours. The Committee agreed that any activity related to work on the Senator's book would have to be undertaken during non-Senate hours.

The Committee reminded the Senator that while his proposal was not precluded by any specific rule of the Code of Official Conduct, Rule 37, paragraph 3 places the responsibility on a Senator, as supervisor of his employees, to take such action as is considered necessary for the avoidance of conflict of interest or interference with Senate duties.

INTERPRETATIVE RULING NO. 129

Date issued: May 15, 1978

Applicable Rule: 34 (Title I of the Ethics in Government Act)

Question considered:

Is an independent candidate for the Senate, who has not yet taken any action to qualify for nomination due to a restriction in state law, still required to file a financial disclosure statement as a candidate?

Ruling:

Under applicable state law, an independent candidate may not begin to collect signatures for nomination until after the primary runoff date, which is two weeks after the May 15th date for filing of the financial disclosure statement with the Secretary of the Senate.

The Ethics in Government Act requires candidates for the Senate to file a Public Financial Disclosure Report within 30 days of becoming a candidate, or by May 15 of the calendar year in which they become a candidate, whichever is later, but in no event later than 7 days prior to an election involving the candidate, and on or before May 15 of each successive year during which the individual continues to be a candidate. The term "candidate" means an individual, other than a Member of Congress, who seeks nomination for election, or election, to the Senate, whether or not such individual is elected. An individual shall be deemed to seek nomination for election, or election, (i) if he or she has taken the action necessary under the law of a State to qualify for nomination for election, or election, or (ii) if the individual or his or her principal campaign committee has taken action to register or file campaign reports required by Section 304(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)).

INTERPRETATIVE RULING NO. 131

Date issued: May 15, 1978

Applicable Rule: 37

Question considered:

May a staff member who terminates his Senate employment be retained on the Senate payroll for a period of time equal to the employee's unused annual leave, while also being employed and compensated by his new employer?

Ruling:

While no specific provision of the Code of Official Conduct would preclude this arrangement, paragraph 3 of Rule 37 directs that a Senate employee report any outside employment for compensation to his supervisor and that it then becomes the responsibility of the supervisor to take such action as is necessary to prevent a conflict of interest or the appearance of a conflict. Paragraph 3 of Rule 37 does not prohibit a former employee from accepting compensation from his new employer during the period he remains on the Senate payroll to expend unused annual leave.

INTERPRETATIVE RULING NO. 132

Date issued: May 15, 1978

Applicable Rule: 41

Question considered:

Does the Committee possess the authority to grant a waiver to an employee, designated under Rule 41 to handle campaign contributions, from the requirement that such individual file a financial disclosure statement?

Ruling:

Rule 41 requires that an employee, designated under the Rule to handle campaign contributions, must file a financial disclosure statement for every year he or she is designated. In this factual situation, the Senator designated an individual under the Rule and at a later date, consistent with earlier Committee rulings, removed the employee from the payroll, for several weeks, to allow the employee to work on the Senator's reelection campaign, with the understanding that the employee would subsequently return to the payroll. The Committee was asked to waive the requirement for filing of a financial disclosure statement in this instance.

The Committee ruled that it did not possess the authority to waive the filing requirement of Rule 41, although an extension of time was granted.

INTERPRETATIVE RULING No. 134

Date issued: May 18, 1978

Applicable Rules: 38 and 40

Question considered:

May a Senator use his 10 percent discretionary funds from his Official Office Expense Allowance to purchase a mailing list of registered voters from his state's election board, when the list is uncoded as to political affiliation?

Ruling:

Under Rule 38, the Committee has ruled that a Senator may not accept a mailing list free of charge from a private, non-governmental source since this would constitute a prohibited in-kind contribution to an unofficial office account. However, the 10 percent discretionary allowance, provided to each Senator in the 1978 Legislative Branch Appropriation Act, may be used to purchase such a list, under standards and procedures established by the Rules Committee, when the list is used for the purpose of better communicating with constituents.

Paragraph 5 or Rule 40 does not contain any restriction on the source of a mailing list which is to be processed by the Senate computer facilities.

INTERPRETATIVE RULING No. 135

Date issued: May 22, 1978

Applicable Area: Franking

Question considered:

May a Senator borrow a mailing list from a private organization, use the list in an otherwise frankable mailing, and return the list to the organization, with address corrections provided by the Postal Service at the Senator's direction, in exchange for the use of the list?

Ruling:

The regulations published by the Select Committee governing the use of the mailing frank state that the mailing lists may be corrected under Postal Service Regulations 122.5 by postmasters on request from a Member of Congress, but that "the frank shall not be used for any other means of correcting the mailing list of a Senator."

Additionally, the franking statute, 39 U.S.C. 3215 states that "a person entitled to use franked mail may not loan his frank or permit its use by any committee, organization, or association; or permit its use by any person for the benefit or use of any committee, organization, or association." The franking regulations employ similar language.

Based on these two restrictions, the Committee ruled that a Senator may not use the mailing list of a private organization in a franked mailing and subsequently communicate information to that organization to enable it to update its mailing list.

INTERPRETATIVE RULING NO. 136

Date issued: May 22, 1978

Applicable Rule: 37

Question considered:

Would paragraph 4 of Rule 37 prohibit a Senator from appointing a staff member to a position on a subcommittee which has jurisdiction over an area of legislation which is of interest to the staff member's father who heads a private consulting firm? The staff member is a passive, non-compensated officer of his father's firm.

Ruling:

Paragraph 4 of Rule 37, Conflict of Interest, provides that staff shall not aid the progress or passage of legislation a principal purpose of which is to further his pecuniary interest or that of his immediate family or enterprises controlled by them. The Committee agreed that if the aide were assigned to the subcommittee, an argument could be made that he, or his father's firm, could stand to profit from the assignment and hence, an appearance of conflict of interest could arise.

Paragraph 3 of Rule 37 places the responsibility on the supervisor of a Senate employee for taking such action as is necessary to avoid a conflict of interest or the appearance of a conflict. The Committee suggested that in the discharge of this responsibility, it would be appropriate to suggest to the staff member that he sever his connection with his father's consulting firm.

INTERPRETATIVE RULING NO. 137

Date issued: May 24, 1978

Applicable Rule: 40

Question considered:

Do the restrictions of Rule 40 on the use of the Senate Recording Studio and "mass mailings" prior to an election in which a Senator is a candidate for a Federal office apply to the sixty days immediately prior to a primary election when the Senator has received his party's nomination at a pre-primary convention and when under State law, such a nominee is not considered a candidate for the primary and the Senator's name will not appear on the primary ballot?

Ruling:

The Senator has been nominated by his party as its candidate for election to the Senate. This nomination was conferred at a party convention held prior to the date of the State's nominating primary election. Under State law, since the Senator had received the nomination and was the only candidate within his party for the office of Senator, he was declared the nominee and was thus no longer considered a candidate in the primary and his name was removed from the primary ballot.

Because of applicable State law, the Committee ruled that the Senator was not a candidate for the State Primary and therefore the restrictions of Rule 40 would not apply to the sixty-day period immediately prior to the primary election.

INTERPRETATIVE RULING NO. 139

Date issued: May 24, 1978

Applicable Rules: 34 and 35

Question considered:

A Member has been invited to use a vacation house provided by a close friend. The house is owned jointly by the friend and three of the friend's brothers. The friend does not plan to be present during the time the Member will use the house. Is the use of the house reportable as a "gift" by the Member under Rule 34 in the Member's Public Financial Disclosure Report?

Ruling:

The Ethics in Government Act provides that accepting the "personal hospitality" of an individual is not reportable as a "gift". "Personal hospitality of an individual" is confined to food, lodging, and entertainment extended for a non-business purpose by an individual (not a corporation or organization) at the personal residence of that individual or his family, or on property or facilities owned by that individual or his family.

The Committee understands that the four brothers do not rent the property out, but use it themselves as a vacation home. Under these circumstances, the gift of its use constitutes "personal hospitality" within the meaning of Rule 34, and it is not reportable.

Interpretative Ruling No. 140

Date issued: May 25, 1978

Applicable Areas: Senate Code of Official Conduct and Foreign Gifts and Decorations Act

Question considered:

Is the Vice President covered by the Senate Code of Official Conduct and is the Senate Select Committee on Ethics the Vice President's "employing agency" for purposes of the Foreign Gifts and Decorations Act?

Ruling:

Although the Vice President is a constitutional officer with the duty of presiding over the Senate, the Committee is of the opinion that he is not a Member, officer or employee of the Senate as those terms are used in the Code of Official Conduct. The term "officer" refers to those officers elected by the Senate. Thus, the Vice President is not within the class of persons covered by the Code of Official Conduct.

The Committee notes that the Foreign Gifts and Decorations Act (5 U.S.C. 7342) excepts the Vice President from a statutory definition of Members of Congress and has thus removed him from the jurisdiction of the Committee for the purposes of this Act.

Interpretative Ruling No. 141

Date issued: June 6, 1978

Applicable Rule and Area: 40, Franking

Question considered:

What is the applicability of Rule 40 concerning the use of the mailing frank, to the "mass mailings" of a committee which utilizes the mail frank of the committee's chairman?

Ruling:

The Committee has determined that the moratoriums contained in Rule 40 and the franked mail statute do not apply to the mass mailings of a Senate committee which are mailed under the frank of the committee's chairman. However, such mailings must relate only to the committee's business and may not focus on a member in a manner that could reasonably be deemed to be personal or political.

INTERPRETATIVE RULING NO. 142

Date issued: June 6, 1978

Applicable Rule: 37

Question considered:

A Member who is the chairman of a committee requested the Ethics Committee's interpretation of paragraph 7 of Rule 37 on Divestiture.

Ruling:

Paragraph 7 of Rule 37 provides:

> An employee of the staff of a committee who is compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year, shall divest himself of any substantial holdings which may be directly affected by the actions of the committee for which he works, unless the Select Committee, after consultation with the employee's supervisor, grants permission in writing, to retain such holdings or the employee makes other arrangements acceptable to the Select Committee and the employee's supervisor to avoid participation in committee actions where there is a conflict of interest.

The Committee does not believe that the issuance of guidelines to be applied uniformly to all committee staff, in all situations, is practical due to the diversity of circumstances and jurisdictions. Committee Chairmen and Ranking Minority Members are expected to monitor possibilities of real or apparent conflicts of interest due to the holdings of committee staff. The Committee does offer the following interpretations for guidance:

The definition of "employee" in paragraph 10 of the Rule, includes staff on the payroll of a committee. Employees certified to a committee by a Senator, pursuant to Section 111 of the Legislative Branch Appropriation Act of 1978, are not employees for the purposes of paragraph 8.

"Directly affected by actions of the committee" is a phrase which must be given application by the Committee Chairman and Ranking Minority Member as to the particular circumstances of each situation.

There is no basis for treating majority and/or minority staff directors or counsels differently from other members of the committee staff.

Committee staff with only administrative duties are also covered by the Rule if they are compensated at a rate in excess of $25,000 and are employed for more than ninety days in a calendar year.

The Rule is not applicable to the property of a spouse or dependent though an employee's interest in jointly or severally held property would be covered by paragraph 7.

The Rule does not apply to an employee acting as trustee for an unrelated person if the employee retains no beneficial interest in the trust corpus. Bare legal title to the corpus of the trust is not sufficient to make paragraph 7 applicable.

If, in a particular instance, divestitute is indicated, a transfer of the assets in question to a spouse or dependent would not be considered divestiture for purposes of the Rule.

The Rule is applicable to all committees, whether or not they have legislative jurisdiction.

Committee inaction or mitigation of proposed regulatory actions is tantamount to "committee action" for purposes of the Rule.

Savings accounts, checking accounts, certificates of deposit, federal government bonds, Treasury bills and notes are not, ordinarily, "holdings which may be directly affected by the actions of committee" for purposes of the Rule.

INTERPRETATIVE RULING NO. 143

Date issued: June 14, 1978

Applicable Area: Foreign Gifts and Decorations Act

Question considered:

May employees on the staff of a Member accept an offer made by the ambassador of a foreign government to fly from the United States to that foreign country at the expense of the foreign government in order to attend a treaty ratification ceremony?

Ruling:

The Foreign Gifts and Decorations Act (5 U.S.C. 7342) prohibits federal employees from accepting gifts of travel from a foreign nation unless such travel occurs within the specific restrictions established by the Congress. The Congress has given its consent to travel involving an international cultural exchange program as well as travel taking place entirely outside the United States under certain circumstances. The Congress did not consent, in agreeing to the Foreign Gifts and Decorations Act, to the acceptance for foreign travel provided by a foreign government when such travel begins and ends within the United States, as does this proposed trip.

The Committee did not find that the proposed travel fits within these Congressionally recognized exceptions and agreed, therefore, that the offer of the ambassador should be declined.

INTERPRETATIVE RULING NO. 144

Date issued: June 15, 1978

Applicable Rule: 37

Question considered:

A Senate employee proposes to engage in outside teaching and publishing activities in the field of his expertise during annual leave. He further proposes to develop a series of class notes which he would have printed and would sell to those persons taking his class. Finally, he plans to write on his own time, a book or pamphlet describing careers in the field, which he would then sell to the general public.

Ruling:

Paragraph 3 of Rule 37, Conflict of Interest, provides that no officer or employee of the Senate may engage in any outside business or employment for compensation unless he has reported that employment in writing to his supervisor. The report is to be made when the employment begins, and on May 15th of each year so long as the employment continues. The Rule provides that the employee's supervisor shall take such action as he considers necessary for the avoidance of conflict of interest or interference with the employee's duties to the Senate.

INTERPRETATIVE RULING NO. 145

Date issued: June 15, 1978

Applicable Rule: 37

Question considered:

May an employee of the Senate accept an offer from a law firm to join the firm in an uncompensated "of counsel" relationship while remaining as a Senate employee?

Ruling:

Paragraph 5 of Rule 37, Conflict of Interest, provides that no Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per year and employed for more than ninety days in a calendar year shall "permit that individual's name to be used by such a firm, partnership, association, or corporation. . . ." It is our opinion that the proposed relationship as uncompensated "of counsel" would conflict with paragraph 5 of Rule 37.

INTERPRETATIVE RULING NO. 146

Date issued: June 16, 1978

Applicable Rules: 34 and 35

Question considered:

An airline strike has interrupted travel service to a Member's home state. May the Member accept travel on a corporate plane that hauls freight on a regular basis to the home state? [3]

Ruling:

Reimbursing the corporation at the commercial rate for the travel would mean that there was no "gift" accepted by the Member under Rule 35. If the corporation declines reimbursement, the Member could accept the travel and report it so long as the corporation is not a prohibited source, which is defined as a corporation that maintains a political action committee or employs a registered lobbyist. If the corporation is a prohibited source, then there must be reimbursement or the travel must be declined.

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[3] Acceptance & valuation of corporate travel have been readdressed in Interpretative Ruling No. 412, dated August 11, 1986.

INTERPRETATIVE RULING NO. 147

Date issued: June 19, 1978

Applicable Rule: 37

Questions considered:

The following questions concerning paragraph 7 of Rule 37 were submitted by Chairmen and Ranking Minority Members of Senate Committees.

(1) What is meant by "substantial holdings";

(2) Does paragraph 7 apply to S. Res. 4 (former S. Res. 60) staff persons;

(3) Are the holdings of spouses and dependents subject to divestiture;

(4) Are the blind trust provisions of the Ethics in Government Act available in order to avoid divestiture;

(5) What is meant by "holdings which may be directly affected by actions of the Committee";

(6) Is Committee inaction tantamount to "action" as described in paragraph 7;

(7) What procedures should be followed in order to obtain permission to retain holdings affected by the Rule;

(8) What procedures will be utilized for consultation with an employee's supervisor under the Rule;

(9) Since the staff director, general counsel and minority staff director must participate in all legislation before the Committee, would different guidelines be appropriate for them?

Ruling:

The Select Committee does not believe that the issuance of specific guidelines to be applied uniformly to all committee staff is practical due to the diversity of circumstances and jurisdictions of committees. Each chairman should initiate appropriate steps to ascertain the extent, if any, of the possiblity of the appearance of a conflict of interest due to the holdings of committee staff persons, and in proper cases, should suggest a course of action he deems to be an acceptable solution. The Committee will assist with doubtful cases upon written request.

As for what constitutes "substantial holdings", the Select Committee has concluded that it cannot translate this into dollars in the absence of specific circumstances, as it is relative and what may be considered substantial in one instance may not be in another. However, the value and character of the holding in relation to the Committee's jurisdiction should be considered as well as the value of the individual's other assets. In a few cases, the holding may constitute a substantial percentage of the equity ownership of the business, and therefore may be a factor to be considered.

Regarding the second question, concerning the definition of an employee on the staff of a committee, employees certified to a committee by a Member, pursuant to Section 111 of the Legislative Branch Appropriations Act of 1978, are not employees of the staff of a committee for purposes of paragraph 7 of Rule 37.

In answer to question three, the Select Committee has determined that the holdings of a spouse or dependent are not covered by the Rule, although paragraph 7 would be applicable to a person's interest in jointly-held property or to the entire property in those jurisdictions where property may be held jointly with rights of survivorship or the equivalent. The Committee has held that the term is not applicable to savings accounts in federally regulated banks or savings and loans; nor is the term applicable to real estate within the District of Columbia, nor to property held in a fiduciary capacity for the benefit of others, where the employee retains no beneficial interest.

With respect to question four, a qualified blind trust may be an acceptable method of eliminating questions of conflict of interest. Before a qualified blind trust could become an acceptable alternative to divestiture, all the facts and circumstances surrounding the blind trust proposal would have to be examined by the Committee. The divestiture requirement of Rule 37 would not be met by a transfer of property by a committee staff employee to his or her spouse or dependent.

With respect to the fifth question as to the meaning of the phrase "directly affected by actions of the Committee", the phrase must be given application by the committee chairman and ranking minority member as to the particular circumstances of each situation.

In answer to question six, committee inaction or mitigation of the effect of a regulation is tantamount to action.

With regard to questions seven and eight, the Committee suggests that an employee who feels that paragraph 7 of Rule 37 may affect his or her financial situation should bring the specifics of the situation to the attention of his supervisor. After attempting to reach a satisfactory solution, the staff member would then write to the Select Committee seeking permission to retain the holdings or proposing an alternative arrangement which might be acceptable to the Select Committee and the employee's supervisor.

With respect to question 9, the Committee concluded that there is no basis in the rule for treating a staff director and counsel differently. They are in the class to which the provision is specifically intended to apply.

In conclusion, the Select Committee does not believe that the issuance of specific guidelines to be applied uniformly to all committee staff is practical due to the diversity of circumstances and jurisdictions of committees. Each chairman should initiate appropriate steps to ascertain the extent, if any, of the possibility of the appearance of a conflict of interest due to the holdings of committee staff persons, and in proper cases, should suggest a course of action he deems to be an acceptable solution.

INTERPRETATIVE RULING NO. 148

Date issued: June 19, 1978

Applicable Rule: 37

Question considered:

May a Member of a committee staff teach a course in public policy at a state university? The assignment will require that the staff member go to the state university campus one day per week during the school year.

Ruling:

Rule 37, paragraph 3 requires the supervisor to make the initial judgment that the outside activity presents no conflict of interest either in the time required to engage in the activity or due to the nature of the activity itself. Based upon the facts presented, this Committee had no reason to disagree with the supervising Senator's opinion that this arrangement would not present a conflict of interest.

INTERPRETATIVE RULING NO. 149

Date issued: June 19, 1978

Applicable Rule: 40

Question considered:

Rule 40 prohibits a Member from sending a "mass mailing" under the frank less than 60 days immediately before the date of any election in which the Member is a candidate, but permits a mailing under the frank which is sent "in direct response to inquiries or requests from persons to whom the matter is mailed."

How is the 60 days computed, and is a request for additional information from a recipient of a questionnaire an "inquiry or request?"

Ruling:

The 60-day limitation is computed by excluding the actual day of the election, whether it is a primary, general, regular, special, or runoff. For example, the last permissible date for delivering a "mass mailing" to a postal facility before a September 9, 1978 primary is July 11, 1978.

The Committee has previously ruled that the Rule 40 exception for any mailing sent "in direct response to inquiries or requests from persons to whom the matter is mailed . . ." would apply to a response sent by a Member to a recipient of a questionnaire, where the recipient of the questionnaire had indicated on a form or on a portion of the questionnaire a desire for additional information on a particular topic.

INTERPRETATIVE RULING NO. 150

Date issued: June 19, 1978

Applicable Area: Franking

Question considered:

May an announcement concerning a speaker's program for summer interns be delivered in franked envelopes by interns in a Member's office to other Congressional offices?

Ruling:

The announcement may be hand-delivered in franked envelopes as long as each envelope is labeled so as to prevent any third party from re-using the envelope, which then would be a loan of the frank. The announcement could also be delivered by inside mail, as delivery of the announcement is a proper Senate service. Mail in franked envelopes which is delivered by the Senate Post Office inside the Senate office buildings does not enter the U.S. Postal System and is thus not within the parameters of the franked mail statute, 39 U.S.C. 3210 et seq.

INTERPRETATIVE RULING NO. 151

Date issued: June 22, 1978

Applicable Area: Franking

Question considered:

May a Member send out as franked mail the first page of the World Bank's "Monthly Operational Summary," a publication which lists the Bank's proposed projects?

Ruling:

The proposed mailing is frankable under 39 U.S.C. 3210. The purpose and intent of the franking statute explains that the official business of Congress pertains to, among other things, "congressional representative functions generally," including "the conveying of information to the public."

In this case, it is possible to characterize the announcement of the World Bank publication accompanied by a page from the publication itself as a "publication containing items of general information," and a "matter of public service." See 3210(2)(a)(G).

In addition, the intent of restrictions on the use of the frank is to prevent the mailing of purely personal or political matters at public expense. The proposed mailing does not appear to fall into either of those categories.

INTERPRETATIVE RULING NO. 152

Date issued: June 22, 1978

Applicable Rule: 40

Question considered:

Is a Member a "candidate", for purposes of the franking and studio restrictions of Rule 40, if his or her name is on the primary ballot, but he or she will have no primary opposition and no write-in votes are allowed under the applicable State law?

Ruling:

The restrictions of Rule 40 are intended to reduce the advantage of incumbent Senators over challengers. Under the circumstances described, there can be no possible challengers in the primary election. The Committee therefore believes that the restrictions of Rule 40 are not applicable.

INTERPRETATIVE RULING NO. 153

Date issued: June 22, 1978

Applicable Rule: 41

Question considered:

Is it permissible for an employee of the Senate to volunteer his or her services during a state, county, or municipal election campaign?

Ruling:

Senate Rule 41, Political Fund Activity, prohibits officers and employees of the Senate from engaging in any fund-raising activities for any Federal office. This prohibition does not apply to the two staff assistants designated by a Senator to handle his or her campaign contributions, nor does it apply to state or local campaigns.

Although Rule 41 does not address non-financial campaign activities, previous interpretations on the question of staff activities in campaigns for Federal office would be applicable to state or local elections as well. For example, the Committee on Rules and Administration has stated, in Senate Report 95-241 (95th Cong.), that it "is not aware of any laws which prohibit individuals who are part of a Senator's staff from participating in a Senator's reelection campaign as long as they do not neglect their Senate duties . . ." In addition, the Committee has stated, in Interpretative Ruling No. 3, dated May 5, 1977, that ". . . Senators should encourage staff to remove themselves from the payroll for periods during which they expect to be heavily involved in campaign activities."

The Committee believes that these statements are applicable to employees of individual Senators, staff of Senate committees, and employees working for officers of the Senate.

INTERPRETATIVE RULING NO. 154

Date issued: June 22, 1978

Applicable Rules: 40 and 41

Questions considered:

(1) Is a Senator whose name appears on a primary ballot considered a "candidate" for purposes of Rule 40 restrictions when the Senator faces no announced opposition but state law authorizes write-in candidates?

(2) May a part-time staff assistant to a Senator, who also works half-time for the Senator's reelection campaign committee, engage in fund-raising activities for the campaign committee?

(3) Is it possible for a staff assistant, while engaged in Senate duties, to become involved to a minimal degree with campaign-related activity without violating the Code of Official Conduct?

(4) It is permissible for a staff assistant on the Senate payroll to engage in campaign-related activities during other than normal Senate office hours?

Ruling:

(1) The prohibitions imposed by Rule 40 on the use of the frank in mass mailings and on the use of the Senate Recording Studio were intended to restrict the advantages which incumbent Senators might have during a reelection compaign. The Committee previously ruled (Interpretative Rulings No. 137, dated May 24, 1978 and No. 152, dated June 22, 1978) that Senators who do not face a primary election or whose names appear on a primary ballot unopposed, and where no write-in candidates are authorized, are not "candidates" for the purposes of Rule 40. However, when a Senator's name is listed on a primary ballot and state law specifically authorizes write-in candidates, there is a possibility for a contested primary election. As such, the Senator would be considered a "candidate".

(2) A staff assistant, whether full or part-time, may not engage in any fund-raising activities on behalf of a Senator's campaign committee, unless that staff assistant has been designated by the Senator under Rule 41 as one of the two staff assistants to the Senator who may handle his or her campaign contributions.

(3) As to the possibility of minimal involvement by a staff assistant with campaign-related business, the Select Committee believes that in a Senator's re-election campaign there might be some inadvertent and minimal overlap between the duties of a Senator's staff with respect to the Senator's official duties and his reelection campaign. However, a Senator has the responsibility to ensure that such an overlap is of a de minimus nature and that staff duties do not conflict with campaign responsibilities.

(4) As to the ability of a staff assistant to engage in campaign activities during other than Senate working hours, the Committee on Rules and Administration has said in Senate Report 95-241 (95th Congress), which accompanied Senate Resolution 188, that, except for the prohibitions of Rule 41 with respect to the handing of campaign funds, it "is not aware of any laws which prohibit indi-

viduals who are part of a Senator's staff from participating in a Senator's reelection campaign as long as they do not neglect their Senate duties, and the Committee does not feel there should be such proscriptions. Furthermore, it is neither illegal nor a violation of Senate Rules for a member of a Senator's staff to work full-time in political campaigns while on annual leave or vacation time or while on leave of absence from his or her Senate duties. . . ."

INTERPRETATIVE RULING NO. 155

Date issued: June 28, 1978

Applicable Rule: 37

Question considered:

May a Senate employee run for state office while remaining on a Member's staff? No campaigning will be done during the employee's regular working hours.

Ruling:

Paragraph 3 of Rule 37 on Conflict of Interest places the responsibility upon the Member as supervisor to take such action as he or she considers necessary for the avoidance of conflict of interest or interference with Senate duties

The Ethics Committee cannot predict whether in fact the outside activity will conflict with Senate duties or will result in a conflict of interest in connection with a particular issue. The Committee suggests that the Member monitor the situation and consider such reductions in Senate duties and compensation as may be appropriate in the future.

INTERPRETATIVE RULING NO. 156

Date issued: June 28, 1978

Applicable Rule and Area: 35, Foreign Gifts and Decorations Act

Questions considered:

(1) May a Senate employee accept travel-related expenses and an honorarium from a foreign organization in connection with his speaking to a seminar on the problems of unemployment?

(2) May that employee accept from a foreign government expenses related to a fishing trip on the weekend immediately following the seminar?

Ruling:

The travel-related expenses in connection with the seminar would be allowed under paragraph 4 of Rule 35 concerning educational programs paid for by foreign organizations. The honorarium is not prohibited under Rule 35 since it is paid as consideration for his speech to seminar participants.

However, the acceptance of an invitation to a weekend fishing trip, at the expense of a foreign government or one acting as its agent, would be a gift which would not be permissible under paragraph 4 of Rule 35, since the principal purpose of the trip would not be educational. The Foreign Gifts and Decorations Act would also prohibit acceptance of a gift of more than $140 from a foreign government or one acting as its agent unless refusal would "likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States."

INTERPRETATIVE RULING NO. 157

Date issued: June 30, 1978

Applicable Rules: 34 and 35

Question considered:

Is it permissible for a Senator to accept, in connection with an appearance related to his Senate duties, air transportation to be provided by the Federal Government and other related expenses of travel which are to be provided by a State government? Would the Senator be required to report the receipt of any of these items?

Ruling:

The acceptance by a Senator of air transportation from the Federal government or a State government for travel-related to the performance of official duties is not a "gift" subject to the restrictions of Senate Rule 35. In addition, the Ethics in Government Act specifically excludes from its disclosure requirements the reporting of travel-related payments made by the United States Government or by State and local governments.

INTERPRETATIVE RULING NO. 159

Date issued: July 11, 1978

Applicable Rule: 37

Question considered:

May a Senate employee accept Federal funds from the Department of Interior to restore certain historic property owned by him?

Facts:

The employee does not work for him nor does his supervisor serve on any Subcommittee having oversight of the Department of Interior.

Ruling:

Rule 37 of the Senate Code of Official Conduct relates to conflicts of interest and provides that no employee may receive any compensation (defined by the Special Committee which reported the Code as "financial benefit") which occurs by virtue of influence improperly exerted from the employee's position.

While the Committee was of the opinion that no evidence of improper conduct reflecting upon the Senate was suggested in this case, under Rule 37 it is the responsibility of the employee's supervisor to ensure that no conflict of interest arises.

The Committee is advised that the Internal Revenue Service has under consideration the question of whether this type of transaction constitutes a taxable sale or exchange or a gift for Federal income tax purposes.

INTERPRETATIVE RULING NO. 160

Date issued: July 13, 1978

Applicable Rule: 40

Question considered:

Is it consistent with Senate Rule 40 for a Senator to arrange to purchase from a non-Senate organization a copy of its membership or mailing list for use by the Senator in a mass mailing under the frank, where the list will be prepared by the non-Senate organization on mailing address labels which will then be affixed to the franked envelopes by the Senate Service Department?

Ruling:

Rule 40, paragraph 2, provides that only offical funds of the Senate may be used to prepare any mass mailing material to be sent out under the frank. The Committee has previously ruled that the preparation of a mass mailing includes the preparation and affixing of mailing address labels.[4]

The Committee has agreed that in order to meet the requirement of paragraph 2 of Rule 40, a Senator who desires to use the mailing list of an outside organization must reimburse that organization for the costs associated with his obtaining such a lists. The Committee has previously ruled that the 10 percent discretionary allowance may be used to purchase mailing lists for use in an official mailing.[5]

INTERPRETATIVE RULING NO. 161

Date issued: July 28, 1978

Applicable Rule and Area: 38, Federal Election Campaign Act

Question considered:

May excess campaign funds be used to defray the travel expenses of a Member's wife in order that she might attend events in connection with the Member's official duties?

Ruling:

The Federal Election Campaign Act of 1971 (specifically, 2 U.S.C. 439a) and Senate Rule 38 allow a Member to defray from his excess campaign funds expenses incurred in connection with official duties. The Ethics Committee considers a spouse's travel expenses to be in connection with the Member's official duties as long as the purpose of the function to which the expenses are incidental is not predominantly social or for personal pleasure.

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[4] See Interpretative Ruling No. 68, dated September 27, 1977.

[5] See Interpretative Ruling No. 134, dated May 18, 1978.

It should be noted that the regulations of the Federal Election Commission require reporting of the use of such funds for official expenses.

The Ethics Committee expresses no opinion as to the tax consequences of using political committee funds to defray official expenses.

INTERPRETATIVE RULING NO. 162

Date issued: August 3, 1978

Applicable Rule: 35

Question considered:

May a Member accept a gift of the use of an apartment from a friend if the apartment is owned by the friend's employer, an organization having a direct interest in legislation? In determining the value of the gift, may the Member divide the total value by the number of members of his family who will be using the apartment?

Ruling:

Rule 35 prohibits the acceptance of gifts worth over $100 during a calendar year, including gifts of lodging, from organizations having a direct interest in legislation before the Congress. Although the use of an apartment has been offered to the Member by a friend, the apartment is owned by the friend's employer, who maintains a separate, segregated fund for political purposes and is thereby a "prohibited source" under Rule 35.

The Committee has determined in prior rulings that the "personal hospitality" exception to the definition of a "gift" applies only to food, lodging and entertainment enjoyed while a guest in the host's personal residence or on premises leased by the host which are not owned by the host's employer.[6]

Thus, this Member may not accept the offer to use the apartment unless its use is valued at $100 or less.

In determining the value of the use of the apartment, the Member may not divide the amount by the number of his family members who will be using the apartment also.

INTERPRETATIVE RULING NO. 163

Date issued: August 3, 1978

Applicable Rule: 37

Question considered:

May a Senate employee accept an honorarium for presenting a paper and speaking at a seminar sponsored by a State university, when the funds for the seminar were derived in part from a Federal grant?

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[6] See, for example, Interpretative Ruling No. 76, dated October 5, 1977.

Ruling:

A university is sponsoring a seminar and has asked a Senate employee to present a paper on an issue relating to his Senate duties. Although some of the funding for the seminar was provided to the university by an agency of the Federal government, the university is the sponsor and payor of the honorarium. No Senate rule would preclude the acceptance of an honorarium from the university, provided that the appearance had been approved by the employee's supervisor pursuant to Rule 37.3.

The Select Committee reminded the employee that if required to file a financial disclosure statement, the employee must disclose the source, amount, and date of each such honorarium received in a calendar year.

INTERPRETATIVE RULING NO. 164

Date issued: August 4, 1978

Applicable Rule: 37

Question considered:

May an employee of a Senate committee purchase a weekly newspaper as an investment?

Facts:

The Committee understands that the editorial operation of the paper will remain in the control of the editor and that as publisher, the individual will receive no compensation and no return on the investment until such time as the paper's history of yearly losses is reversed.

Ruling:

Nothing in Rule 37, Conflict of Interest, precludes the proposed purchase of the newspaper. The Committee notes, however, that at such time as the Senate staff member begins to receive compensation from the newspaper, paragraph 3 of Rule 37 requires that the nature of this activity be reported to the employee's supervisor on an annual basis.

INTERPRETATIVE RULING NO. 165

Date issued: August 4, 1978

Applicable Area: Franking

Question considered:

May the mailing frank be used by a Senator to mail invitations for participation and informational matter concerning an energy fair, co-sponsored by the Senator, to potential exhibitors, speakers, and other interested persons?

Ruling:

The Senator, together with several agencies of the Federal Government and a state university, is sponsoring a non-profit educational activity dealing with alternative energy technologies and strategies. The Senator proposes to use his mailing frank to write various individuals and organizations to participate. In addition, he proposes to include in the mailing informational matter put together by his office. The preparation and actual mailing will be done by the Senator's office.

The Committee previously ruled in Interpretative Ruling No. 72, dated September 29, 1977, that the laws and regulations governing the use of the mailing frank do not preclude the preparation and mailing by the Senate Service Department of matter publicizing a small business conference which is co-sponsored by a Senator, several agencies of the Federal Government, and a state university.

The Committee ruled that this prior interpretation would authorize the use of a Senator's mailing frank to mail the invitations and information proposed in this factual situation.

INTERPRETATIVE RULING NO. 166

Date issued: August 10, 1978

Applicable Rule: 37

Question considered:

Does Rule 37, paragraph 5, prohibit an employee who is compensated in excess of $25,000 per year from selling real estate on weekends under an arrangement whereby his associate broker's license is held by a real estate company?

Ruling:

Rule 37, paragraph 5, prohibits an employee of the Senate who is compensated as a rate in excess of $25,000 per year from affiliating with a "firm, partnership, association or corporation for the purpose of providing professional services for compensation." The legislative history of this provision indicates that the sale of real estate was intended to be included in the prohibition. Thus, the activity in question would not be permissible because the employee was deemed to be affiliated with the real estate company which, under state law, held the employee's license as a real estate broker.

INTERPRETATIVE RULING NO. 167

Date issued: August 10, 1978

Applicable Rule and Area: 35, Foreign Gifts and Decorations Act

Question considered:

May a staff member attend the inauguration of a foreign president-elect as the guest of a political party in the President's country?

Ruling:

Rule 35 of the Senate Code of Conduct prohibits the acceptance of gifts valued in excess of $100 from, among other sources, foreign political parties. While Congress has given specific consent to travel involving an international cultural exchange and certain travel taking place entirely outside the United States, the Committee did not find that the proposed travel fell within these Congressionally recognized exceptions. Therefore, the Committee ruled that the offer should be declined.

INTERPRETATIVE RULING NO. 169

Date issued: August 18, 1978

Applicable Area: Advisory Opinion on Use of Letterhead

Question considered:

Is the use of the words "United States Senate" on a Senator's personal stationery or on a "Senate-gram" (a facsimile of a mailgram), when loaned to a third party for use in a campaign fund-raising effort, consistent with the Committee's Advisory Opinion on use of a Senator's letterhead? Is the use of the words "Senator John Doe" on a letterhead, when loaned to a third party for use in a campaign fund-raising effort, consistent with that Advisory Opinion?

Ruling:

The Committee agreed that it would be inconsistent with the Advisory Opinion for a Senator to allow a non-Senate group or organization to make use of the Senator's letterhead which included the words "United States Senate." The Committee agreed that it is the use of the words rather than the type style employed which is regulated by the Advisory Opinion. Thus, a Senator's loan of letterhead with the words "United States Senate" would be prohibited no matter what type style or lettering was chosen by the organization.

The Committee concluded that a Senator is not prohibited by the Advisory Opinion from allowing a non-Senate organization to use letterhead identifying the Senator as "Senator John Doe."

INTERPRETATIVE RULING NO. 170

Date issued: September 14, 1978

Applicable Rule: 37

Question considered:

May a Senator employ a member of his staff in a private capacity to do research and perform editorial work in connection with a book the Member is preparing?

The employee would continue to perform services as a regular Senate employee commensurate with the Senate salary received, and any work performed in connection with the book would be undertaken in non-Senate working hours. The Senator, who was at the time a candidate for reelection to the Senate, explained that the subject of the book would include the Senator's experiences in the Senate and his views on public policy issues.

Ruling:

The Code of Official Conduct does not preclude such an arrangement; however, paragraph 3 of Senate Rule 37, Conflict of Interest, places the responsibility on the Member for taking such action as is necessary for the avoidance of a conflict of interest or interference with Senate duties.

In recognition of this obligation, the Senator agreed that the book would not be offered for sale to the public until after the conclusion of the general election in which the Senator was a candidate for reelection to the Senate.

INTERPRETATIVE RULING NO. 171

Date issued: September 14, 1978

Applicable Rule: 37

Question considered:

May a Member aid the passage of certain tax legislation by sending letters that set forth arguments in support of the legislation if the Member's spouse practices a profession which would be benefitted by the passage of the legislation in question?

Ruling:

Rule 37, paragraph 4, provides that no Member shall knowingly use his official position to introduce or aid the progress or passage of legislation, a principal purpose of which is to further the pecuniary interest of his immediate family. However, the legislative history, S. Report 95–49, makes clear that in the case of legislation which would have a broad, general impact, such as most tax legislation, the prohibitions of paragraph 4 would not apply. Consequently, the Committee believes that the Member's support of the legislation in question is not in violation of Rule 37.

INTERPRETATIVE RULING NO. 172

Date issued: September 19, 1978

Applicable Rule: 35

Question considered:

May a Senator and one or more of his employees accept, within the provision of Rule 35, the offer from a national committee of a major political party to provide the Senator and his employees with the expenses of travel in connection with a nationwide series of appearances by the Senator to promote a particular piece of legislation which was written and sponsored by the Senator?

Ruling:

Rule 35 excludes from the definition of a "gift" the payment of the necessary expenses, including travel, food, and lodging, in the performance of services for an organization by a Member, officer, or employee of the Senate, incident to his or her official duties, if those expenses are paid by the organization for which the services are performed. The Committee believes that a Senator's participation and that of Senate employees in a nationwide series of speeches, press conferences and other events to promote a particular piece of legislation, which was authored and sponsored by the Senator, would be within the official duties of the Senator and his or her staff.

INTERPRETATIVE RULING NO. 175

Date issued: September 21, 1978

Applicable Area: Miscellaneous

Question considered:

May a Senator donate a copy of an art book prepared by the Architect of the Capitol to political party officials for fund-raising purposes?

Ruling:

A Member's donation of property, given to him in his capacity as a member of the Senate, to another individual is not prohibited by any specific provision of the Code of Conduct, nor does it appear to violate any regulations of the Joint Committee on Printing or the Senate Rules Committee. The Committee is concerned, nevertheless, that the use of such public property to raise funds for a political party could reflect discredit upon the Senate.

That concern is, in the Committee's judgment, an adequate basis upon which to decline to approve the practice with respect to donations of public property to groups organized for profit and political organizations.

INTERPRETATIVE RULING NO. 176

Date issued: September 22, 1978

Applicable Rule: 35

Questions considered:

(1) May a Senator accept a life membership in an association which is registered under the Federal Regulation of Lobbying Act of 1946?

(2) May a Senator accept an honorary membership on a national hall of fame?

Rulings:

(1) Because the association is an organization registered under the Federal Regulation of Lobbying Act, it is therefore deemed to have a direct interest in legislation before the Congress for the purpose of the prohibition on gifts having an aggregate value exceeding $100, as set forth in Senate Rule 35. However, since the sole financial benefit which would accrue to the Senator would be the value of the association's dues, which are $15 per year, the Committee is of the opinion that the acceptance of a life membership in the organization would not be improper.

(2) The national hall of fame is not a registered lobbyist nor does it maintain a separate segregated fund for political purposes. Thus, the prohibitions of Rule 35 would not apply to an honorary membership in this organization. The Committee has further determined that the acceptance of an honorary membership would not be improper.

INTERPRETATIVE RULING NO. 178

Date issued: September 29, 1978

Applicable Areas: Foreign Gifts and Decorations Act; Mutual Educational and Cultural Exchange Act

Question considered:

May a Senate employee accept an invitation to participate in a seminar to be held outside the United States where the sponsor, a foreign government, has offered to provide the necessary expenses of travel, including transportation, food and lodging?

Ruling:

Article I, Section 9, Clause 8 of the United States Constitution prohibits employees of the Federal Government, absent the consent of Congress, from accepting any gift, including the expenses of foreign travel, from any foreign government. Consistent with this prohibition, the Congress has consented to the acceptance of such gifts in two specific instances, the Mutual Educational & Cultural Exchange Act (22 U.S.C. 2458(a)) and the Foreign Gifts & Decorations Act (5 U.S.C. 7342). The permission for a federal employee (including Members, officers and employees of the Senate) to accept gifts under either of these two statutes is very narrowly drawn so as to apply in only a limited number of factual situations. Given the facts presented in this inquiry, the Committee ruled that the proposed arrangement would not fit within either of these two narrow exceptions, and, therefore, the constitutional prohibition would prevent acceptance of the offer.

INTERPRETATIVE RULING NO. 179

Date issued: September 29, 1978

Applicable Rules: 34 and 35

Question considered:

Under what circumstances may a Senator accept an invitation from a personal friend to be a weekend guest at a private club? Do the expenses of the weekend have to be reported by the Senator?

Ruling:

In this instance, the invitation was extended to a Senator by an individual who was the chief executive officer of a corporation. Neither the officer nor the corporation maintained a separate, segregated fund for political purposes nor were either registered under the Federal Regulation of Lobbying Act of 1946 and therefore neither were "prohibited sources" within the meaning of paragraph

1(b) of Rule 35. Under such circumstances, the Senator could accept the gift of a weekend at the club.

Though the gift of the expenses for the weekend could be accepted, the financial disclosure requirements of the Ethics in Government Act, require the Senator to disclose the source, a brief description of, and the value of any gifts of transportation, food, lodging or entertainment aggregating $250 or more provided during a calendar year by any one source.

INTERPRETATIVE RULING NO. 180

Date issued: September 29, 1978

Applicable Area: Franking

Question considered:

May a Senator supply franked labels to the Library of Congress for the purpose of shipping surplus books to an educational institution in the Senator's home state? The Joint Committee on the Library has established a policy which requires these books to be shipped directly to the institution, and the Library of Congress would be unable to pay the shipping charges involved\in the event the books are not sent under the Senator's frank.

Ruling:

Section 3215 of Title 39 of the United States Code states:

> A person entitled to use a frank may not lend it or permit its use by a committee, organization, or association, or permit its use by any person for the benefit or use of any committee, organization, or association. This section does not apply to any standing, select, special, or joint committee of the Senate, House of Representatives, or Congress, composed of Members of Congress, or to the Democratic caucus or the Republican conference of the House of Representatives nor the Senate.

The *Regulations Governing the Use of the Frank* state that the use of the frank is a privilege which a Senator must view as a personal responsibility and which must be vigilantly safeguarded against abuse. While the specific exceptions set forth in the statutory prohibition against the loan of the frank do not cover the situation described, a review of the legislative history indicates that Congress clearly intended to permit books from the Library of Congress to be sent out under the frank to libraries and other persons.

Given the circumstances outlined above, it is the Committee's opinion that it would be permissible for a Senator to delegate to a member of his staff the responsibility for ensuring that his frank is used for the purpose of shipping the books from the Library of Congress to the educational institution involved in such a manner as to avoid any misuse, such as the diversion of franked labels, which could constitute and improper loan of the frank.

INTERPRETATIVE RULING NO. 181

Date issued: September 29, 1978

Applicable Rule: 37

Question considered:

May a full-time staff member conduct academic research for a non-profit foundation at a university? The staff member would receive a grant of approximately $12,000 from the foundation for the research which he intends to conduct during the evenings and on weekends.

Ruling:

Rule 37 of the Senate Code of Official Conduct relates to conflict of interest, and paragraph 2 of that rule prohibits employees from engaging in outside activity for compensation which is inconsistent or in conflict with official duties.

Under Rule 37, paragraph 3, it is the responsiblity of the staff member's supervisor to make the initial determination that the outside activity presents no conflict of interest and to take such actions as are necessary for the avoidance of a conflict or interference with Senate duties. Based upon the evidence submitted, the Select Committee was of the opinion that no conflict of interest would be presented by the proposed outside professional activity.

INTERPRETATIVE RULING NO. 182

Date issued: September 29, 1978

Applicable Rule: 41

Question considered:

Does Rule 41 prohibit a Senate employee from handling funds to be raised after the general election by a state party organization for the purpose of paying off the campaign debts incurred by the party's candidates for federal, state and local offices?

Ruling:

Rule 41 prohibits an officer or employee of the Senate from receiving, soliciting, being the custodian of, or distributing, funds in connection with any campaign for the nomination or election of any individual for any federal office. This prohibition does not apply to a Senate employee who is one of the two persons designated by his supervising Senator to perform any of those functions on the Senator's behalf.[7]

The prohibitions in Rule 41 are not applicable, however, to participation by Senate employees in state and local election activities. If those activities, and a Senate employee's participation in the activities, were to be clearly divisible from any of the organization's activities performed in connection with any federal election, the employee would be permitted to participate in fundraising activities related to state and local elections. However, if the proposed activities would involve the raising of a common fund to discharge the party's political debts on behalf of all of its candidates, whether federal, state, or local, the Committee believes that, even if the proceeds of the fundraising activities were to be apportioned between federal candidates and state or local candidates, a Senate employee's participation in the fundraising activities would be prohibited under Rule 41.

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[7] See also Interpretative Ruling No. 32 (dated June 17, 1977).

INTERPRETATIVE RULING NO. 183

Date issued: September 29, 1978

Applicable Rules: 37, 38, and 41

Question considered:

Does a Senator's utilization of the services of a student intern, whose living and travel expenses are to be paid by a corporation during the three months of the intern program, constitute an impermissible defrayal of official expenses under Rule 38?

Ruling:

The utilization by a Member of the services of interns who are compensated, i.e., receive living and travel expenses from non-Senate funds, raises a question under Rule 38, which permits the defrayal of official expenses from only four specified sources. While the Senate Code of Official Conduct contains no specific exception to Rule 38 for expenses in connection with internship programs, Rule 41 does implicitly approve of the practice of utilizing the personal services of individuals who are *not* compensated by the Senate. In essence, Rule 41 calls for these individuals to comply with the Code of Conduct, and, in certain cases, requires their supervisors to file quarterly reports with the Select Committee.

In light of the fact that Rule 41 would be rendered meaningless were a Member not permitted to utilize the services of an individual compensated with non-Senate funds, the Committee has determined that corporate sponsorship of student intern programs is a permissible defrayal of official expenses under Rule 38.

It should be noted that the utilization of the services of an intern compensated by non-Senate funds could give rise to a conflict of interest question under Rule 37, should the intern be given an assignment with a Senate committee having primary legislative jurisdiction over the activities of the intern's sponsor, or over any agency of the Government charged with regulating the corporate sponsor's activities.

INTERPRETATIVE RULING NO. 187

Date issued: October 11, 1978

Applicable Rule: 35

Question considered:

May a Senator accept from a friend payment for the cost of refreshments to be consumed at a staff "going away" party?

Ruling:

Rule 35 of the Senate Code of Official Conduct prohibits the acceptance of gifts worth over $100 in a calendar year by a member from "prohibited sources," including registered lobbyists or persons employed by them for lobbying purposes as well as the officers, directors or lobbyists of an organization that maintains a separate, segregated political fund. As long as the donor does not fit within those categories (and he is not a foreign national), the Senator is not prohibited by Rule 35 from accepting a gift from him having a value in excess of $100.

If the gift is made to the Senator by a non-prohibited source, he or she would be required to disclose its acceptance pursuant to the Ethics in Government Act, should the value exceed $250.

INTERPRETATIVE RULING NO. 188

Date issued: October 11, 1978

Applicable Rules: 35 and 37

Question considered:

Would it be improper for an officer or employee of the Senate to leave the Senate payroll for a period of time in order to accept an invitation to participate in an extended seminar being offered by the organization with an interest in legislation pending before the Congress?

Facts:

In this situation, the non-Senate organization has invited an employee on the personal staff of a Member to participate in an extended seminar concerning the business activities and interests of the organization. The organization has stipulated that Senate staff participating in the seminar must agree to leave the Senate payroll for the duration of the seminar. While participating in the seminar, the organization will compensate the staffer at a rate equal to his or her Senate salary and will provide room and board. At the conclusion of the seminar, the employee will return to the Senate payroll.

Ruling:

The Committee ruled that if the arrangements between the non-Senate organization and the employee constituted a bona fide, non-governmental, employer-employee relationship, i.e., a relationship in which the employee would perform a service commensurate with the compensation to be provided by the organization then the arrangement would not constitute a prohibited gift under Rule 35.

The Committee further held that while the arrangement did not appear to violate any specific provision of Rule 37, Conflict of Interest, paragraph 3 of the Rule directs that the employee must inform his supervisor of the existence of any outside employment for compensation when such employment commences and the nature of that employment. The paragraph then directs that the supervisor must take such action as is necessary for the avoidance of conflict of interest or interference with the employee's duties to the Senate.

INTERPRETATIVE RULING NO. 189

Date issued: October 11, 1978

Applicable Rule: 35

Question considered:

May a Senate employee, who is taking annual leave to speak at a seminar in London not in connection with Senate duties, accept an honorarium and travel expenses from the two British companies that are sponsoring the seminar?

Ruling:

Rule 35 of the Senate Code of Official Conduct prohibits the acceptance of a "gift" from a foreign national. However, the definition of "gift" does not include payments for which consideration of equal or greater value is received . The Senate employee's participation, as a speaker of the seminar as described by the invitation from the seminar's sponsor, would seem to be "consideration" of equal or greater value for the travel expenses and honorarium which the sponsors intend to pay. Under these circumstances, the staffer's acceptance of the travel expenses and honorarium in question would not be prohibited by Rule 35 because the offered expenses would not constitute a gift under the Rule.

INTERPRETATIVE RULING NO. 191

Date issued: October 16, 1978

Applicable Area: Franking

Question considered:

May a Senator send out a franked mass mailing which contains material reprinted from the *Congressional Record,* when the reprint has been reset to make the material more legible?

Ruling:

The franked mail statute (39 U.S.C. 3212) and *Regulations Governing the Use of the Mailing Frank* permit the franked mailing of reprints from the *Congressional Record,* including speeches or reports contained therein, provided such material is otherwise frankable under Section 3210. The fact that material has been placed in the *Record* does not in and of itself make it frankable.

Assuming the content of the proposed mailing would be frankable, there is no provision in the statute or regulations which would prevent the reprint from being made more legible by the resetting of type used in the *Record.* The Select Committee believes that the franked mail statute's use of the term "reprint" would include such a practice.

INTERPRETATIVE RULING NO. 192

Date issued: October 16, 1978

Applicable Rule: 35

Question considered:

Would Rule 35 on Gifts, which is applicable to all Members, officers, employees, their spouses and dependents, prohibit the acceptance of certain travel arrangements offered by the employer of a spouse of a Senate employee when the employer is a "prohibited source" within the meaning of paragraph 1(b) of Rule 35?

Facts:

In this situation, the spouse of a Senate employee will be temporarily assigned by her employer to a project in another location some distance from Washington, D.C. The project is scheduled to last for several months and will require some weekend work. As a result, the employer, registered under the Federal Regulation of Lobbying Act of 1946 and thus a "prohibited source" for purposes of Rule 35, would implement an existing company policy which provides the spouse with weekend round-trip airfare to and from Washington. On those occasions when the spouse will be engaged in weekend work, the employer has offered to fly the Senate employee to his spouse's location.

Ruling:

Paragraph 2(a)(7) of Rule 35 excepts from the definition of "gift" anything of value given to the spouse of a reporting individual by the employer of the spouse in recognition of the services performed by the spouse. In this factual situation, the Committee ruled that this exception would be applicable to the offer of round-trip airfare, whether the actual user of the ticket was the Senate employee or the spouse.

INTERPRETATIVE RULING NO. 193

Date issued: October 17, 1978

Applicable Rule: 35

Question considered:

May a Senator accept travel expenses from an official of a district's political party organization in return for his appearance at a rally sponsored by the organization?

Ruling:

Rule 35 excepts from the definition of "gift" anything of value, including transportation, for which consideration of equal or greater value is received.

Travel incident to a political appearance would appear to meet this "consideration" exception. If the Senator is appearing at the invitation of the party official, and if the proposed appearance is in consideration for the cost of the Senator's travel, then the acceptance of those expenses would not be deemed to be a gift for purposes of Rule 35.

INTERPRETATIVE RULING NO. 194

Date issued: October 18, 1978

Applicable Rule: 41

Question considered:

May Senate employees engage in campaign activities on their own time and away from Federal facilities? Is it permissible for a Senate employee, following adjournment of the Congress, to utilize unused vacation time to work full-time in a campaign? Would there be any restriction which would prevent a full-time Senate employee from having his Senate salary reduced while continuing to work for the Senate on a part-time basis in order that the remainder of his time could be devoted to campaign activities?

Ruling:

The Committee on Rules and Administration has stated in Senate Report No. 95-241 (95th Congress), accompanying Senate Resolution 188, that it "is not aware of any laws which prohibit individuals who are part of a Senator's staff from participating in a Senator's reelection campaign as long as they do not neglect their Senate duties . . . it is neither illegal nor a violation of Senate Rules for a member of a Senator's staff to work full-time in political campaigns while on annual leave or vacation time or while on leave of absence from his or her Senate duties . . ." The Select Committee on Ethics believes that this statement is applicable to employees of a Senate committee and those persons employed by an officer of the Senate as well.

Additionally, the Ethics Committee has said in prior rulings [8] that it is proper for a Senator to either reduce the salary or remove an employee from the Senate payroll when the employee intends to spend additional time on campaign activities, over and above leave or vacation time. The Committee recognizes that staff members ought to be able to use bona fide vacation time for political campaign activity. As long as an office has an established and reasonable annual leave policy, and as long as an employee takes no more than the amount of time normally allowed for such leave, the Committee believes that an employee may engage in campaign activities during that time. It should also be noted that the Committee has ruled that the restrictions of Rule 41, on the handling of campaign funds, are applicable to all persons who are on the Senate payroll, even though they might be paid at a reduced rate.

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[8] See, for example, Interpretative Rulings No. 3, dated May 5, 1977; No. 5, dated May 11, 1977; and No. 22, dated May 26, 1977.

INTERPRETATIVE RULING NO. 195

Date issued: October 18, 1978

Applicable Rules: 38 and 40

Question considered:

May a Member borrow from another Senator computerized mailing lists for the purpose of communicating with constituents?

Ruling:

The loan of a mailing list to a Member gives rise to a question under Rule 38 of the Senate Code of Official Conduct. Although the Code does not contain any specific restrictions on the source of a mailing list, the Committee has interpreted Rule 38 to mean that a Member may not accept goods and services in connection with the carrying out of official Senate duties unless they are paid for with funds from one of the four sources listed in the rule. This would normally mean that the provision of a mailing list free-of-charge would constitute an impermissible in-kind contribution to an office account.

However, the Committee has ruled [9] that in-kind services provided by agencies of the Federal Government are not subject to the Rule 38 restrictions, and goods and services provided by other Members of Congress would appear to be similarly excepted. Therefore, the use of a Member's computerized mailing lists would not be in violation of Rule 38.

Should the borrowing Member intend to incorporate the mailing list in the Senate's computer facilities, he or she should be aware that Rule 40, paragraph 5, allows the use of those facilities only if the lists bear no identification of individuals as campaign workers or contributors, as members of a political party, or by any other partisan political designation.

INTERPRETATIVE RULING NO. 196

Date issued: October 26, 1978

Applicable Rule and Area: 40 and Franking

Question considered:

May an agency of the Federal Government with whom a Senator is cosponsoring a conference, print and affix labels to franked envelopes to be used in mailing the invitations to the conference? The envelopes would be returned to the Senate Service Department for stuffing and mailing.

Ruling:

Paragraph 2 of Senate Rule 40 states that only official funds of the Senate shall be used to purchase paper, print or prepare mass mailing material to be sent out under the frank. The Committee has determined, however, that under the circumstances described, it would not be a violation of Rule 40(2) for an agency of the Federal Government to print and affix address labels to franked envelopes to be used for the conference, provided such printing and labeling services are generally available to all Members of the Senate.

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[9] See Interpretative Ruling No. 72, dated September 29, 1977.

Chapter 4, paragraph 2, of the *Regulations Governing the Use of the Mailing Frank* states "it is a privilege which Senators and others must view as a personal responsibility and which must be vigilantly safeguarded against abuse." One such abuse would be an improper loan of the frank in violation of Section 3215 of Title 39 of the United States Code. This Committee has previously ruled (Interpretative Ruling No. 66, September 26, 1977) that the processing of franked mail by an outside organization would constitute an improper loan of the frank because of the opportunity for abuse, such as the alteration of material or the diversion of franked envelopes, that would be presented. However, the Committee has determined that it would be permissible for a Member to delegate to his or her staff the responsibility for ensuring that the process of affixing address labels to the franked envelopes to be used in the conference is carried out by the agency in such a manner as to avoid any misuse which could constitute an improper loan of the frank.

INTERPRETATIVE RULING NO. 197

Date issued: October 31, 1978

Applicable Rule and Area: 41, Code of Official Conduct

Question considered:

Is it proper for Senate staff members to utilize annual leave time to carry out campaign-related activities?

Ruling:

Except for Senate Rule 41, which prohibits anyone other than two designated employees on the staff of a Senator from handling campaign funds, no rule expressly forbids campaign activity by staff members.

The Select Committee has previously ruled that a Senator should either reduce the salary or remove an employee from the Senate payroll when the employee intends to spend a substantial amount of time on campaign activities, over and above leave time.[10]

The Committee recognizes that Senate staff members ought to be able to use bona fide vacation time in whatever way they wish, including participation in a political campaign. So long as staff takes no more than established and reasonable annual leave, the Committee is of the opinion that staff may engage in campaign activities while on annual leave.

Rule 41's restrictions on the handling of campaign funds by only two designees would, of course, remain applicable.

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[10] See, for example, Interpretative Rulings No. 3, dated May 5, 1977; No. 5, dated May 11, 1977; and No. 32, dated June 17, 1977.

Interpretative Ruling No. 198

Date issued: November 6, 1978

Applicable Rules: 38 and 40

Question considered:

Would it be permissible under paragraph 1 of Rule 38 for a Senator to accept, at no cost to him, a computerized mailing list of the names of members of a national labor union in the Senator's home state from another Member of Congress from that state, in order to communicate with the Senator's constituents?

Ruling:

While the Senate Code of Official Conduct does not contain any specific restriction on the source of mailing lists acquired and used by Senators, the Select Committee has previously interpreted Rule 38 to prohibit a Senator from accepting any goods or services from private donors in connection with carrying out official Senate duties, including communicating with constituents, unless those goods or services are paid for with funds available to the Senator from one of the four designated sources listed in paragraph 1 of Rule 38.[11]

However, the Committee has also ruled that in-kind services, when provided by agencies of the Federal Government are not subject to this restriction. This ruling was based, in part, on a prior determination of the Federal Election Commission which stated that the Federal Government was not considered a "contributor" for purposes of the Federal Election Campaign Act.[12]

Based on this ruling, the Committee held in this case that goods and services provided to a Senator by other Members of Congress are excepted from the limitations of Rule 38 and therefore that the acceptance of this computerized mailing list at no cost from another Member of Congress would not violate Rule 38.

However, the Committee reminded the Senator that should he incorporate the mailing list in the Senate computer facility, Rule 40, paragraph 5 would require that the list bear no identification of individuals as campaign workers or contributors, as members of a political party, or by any other partisan political designation.

Interpretative Ruling No. 199

Date issued: November 6, 1978

Applicable Rule and Area: 38 and Franking

Question considered:

Would it be proper for a Senator to conduct from his home state office a telephone survey of his constituents to find out what issues are of concern to them in order to develop legislative priorities? In so doing may a Senator:

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[11] See Interpretative Ruling No. 44, dated July 18, 1977.

[12] See Interpretative Ruling No. 72, dated September 29, 1977.

(1) use members of his staff and volunteers to conduct the survey?

(2) use the Senator's frank to mail the surveys in bulk to his home office?

(3) accept the offer of a private group to use their telephone facilities free of charge?

(4) use telephone facilities provided by a Federal agency in the home state?

(5) use Senate allowances to (a) rent a telephone bank and (b) pay for use of computers of a non-government organization to compile the survey results?

Ruling:

(1) Telephone surveys of a Member's constituents, when undertaken to better inform the Senator of the views and concerns of his constituents, have been held by the Committee to be permissible under the Code of Official Conduct. The Committee has previously ruled that Rule 38 does not prohibit the use of volunteers who perform services for a Senator either in his Washington or homestate office.[13]

(2) The use of the mailing frank to send copies of the survey to a Senator's district office is also proper.

(3) The Committee has consistently ruled that Rule 38 does prohibit a Senator from accepting in-kind contributions of goods and services from private donors to defray office expenses. Therefore, it would be improper for a Senator to accept non-governmental telephone facilities which might be offered at no cost.

(4) In contrast, the Committee has previously ruled that the Rule 38 restriction on in-kind contributions of goods and services does not apply when the donor is an agency of the Federal Government or another Member of Congress. (Interpretative Ruling No. 72, dated September 29, 1977). Therefore, telephone facilities provided to a Senator by a Federal agency may be used to conduct a telephone survey of constituents.

(5) The question as to whether Senate allowances might be used to pay for non-governmental telephone facilities and/or computer time comes under the primary jurisdiction of the Committee on Rules and Administration which approves vouchers drawn against Senate allowances.

INTERPRETATIVE RULING NO. 200

Date issued: November 8, 1978

Applicable Rule and Area: 38 and Federal Election Campaign Act

Question considered:

May an individual employed in a Senator's office be reimbursed from that Senator's campaign funds for travel expenses (lodging and meals) incurred in connection with the staff member's attendance at a veterans' conference?

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[13] Interpretative Ruling No. 74, dated October 3, 1977. The Committee's ruling in this instance applies to surveys fitting the above description and does not apply to a survey which would be used in any manner deemed to be partisan or political.

Ruling:

The Federal Election Campaign Act (2 U.S.C. 439a) provides that campaign funds may be used to defray ordinary and necessary expenses incurred in connection with the duties of a federal officeholder. Rule 38 of the Senate Code of Official Conduct provides that otherwise unreimbursed expenses allowable in connection with the operation of a Member's office may be defrayed from, among other sources, funds derived from a political committee registered with the Federal Election Commission.

Therefore, if the staff member's attendance at the veterans' conference was made in connection with the Senator's official duties, funds from the Senator's campaign committee may be used to defray the expenses incident to that attendance.

INTERPRETATIVE RULING NO. 201

Date issued: September 27, 1978

Applicable Rule: 34

Question considered:

For purpose of disclosing gifts of $100 or more, is a gift to a Member from several employees of a local high school valued at its total cost, or is the value of the gift divided by the number of individual donors?

Ruling:

Section 102(a)(2)(B) of the Ethics in Government Act requires reporting of "the indentity of the source of all gifts . . . aggregating $100 or more in value received from any source . . . during the preceding calendar year." The facts of this inquiry regarding the evaluation of a gift raise the question of the meaning of the phrase "any source", i.e., is the donor of the gift the school, the school employees as a group, or several separate individuals?

If, on the one hand, the gift is from the school or from the employees as a group, then it would be a gift from one source and the value would be its total cost. If the individuals who contributed toward its cost were solicited, along with other school employees, with the intent to make a gift from the school or from the employees as a group, or if the individuals when presenting the gift asserted their common association with the school, the presentation would appear to be a gift from one source.

If, on the other hand, the gift is from several persons acting as individuals, the transaction would be treated as five separate gifts from five individuals, for reporting purposes, and the value of each gift would be the amount that each individual contributed toward its cost. Thus, if the five school employees decided among themselves to make a gift to the Senator and did so without soliciting contributions toward the cost of the gift from school employees as a group, or if the employees presented the gift without asserting their common association, then the facts would indicate that the gift is, in fact, from five persons acting as individuals.

INTERPRETATIVE RULING NO. 202

Date issued: November 30, 1978

Applicable Rules: 34 and 35

Question considered:

May a staff assistant to a Senator accept an invitation to address an association's convention? Would the individual be required to disclose the source and description of reimbursements which he or she received for official travel?

Ruling:

Rule 35, Gifts, and Rule 34, Public Financial Disclosure, both except from the definition of "gift" the necessary expenses of the performance of services for an organization by a Senator, officer or employee, incident to his or her official duties, including travel, food, lodging and entertainment, if those expenses are paid by the organization for which the services are provided.

However, the Ethics in Government Act of 1978 requires that reporting individuals, i.e., employees of the legislative branch who have been employed for more than 60 days in the calendar year and are compensated at a rate equal to or in excess of the annual rate of basic pay in effect for GS-16, must disclose the identity of the source and a brief description of reimbursements received from any source aggregating $250 or more in value. "Reimbursement" is defined in the Act to mean any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

> (A) provided by the United States Government, the District of Columbia, or any State or political subdivision thereof;
>
> (B) required to be reported by the reporting individual under section 7342 of Title 5, United States Code, the Foreign Gifts and Decorations Act; or
>
> (C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434).

INTERPRETATIVE RULING NO. 203

Date issued: December 5, 1978

Applicable Rules: 34, 35, and 37

Question considered:

May a Senate employee accept the necessary expenses of foreign travel from a privately funded, domestic organization in order that the employee might attend a seminar sponsored by the foreign counterpart of the domestic organization?

Ruling:

The Select Committee has proviously ruled [14] that a Member, officer or employee of the Senate may accept the necessary expenses of foreign travel provided by a domestic organization which is the sponsor of the program involving the foreign travel. In this factual situation, while the domestic organization providing the necessary expenses of foreign travel and the sponsor of the program in the foreign country were not one and the same, the Select Committee in agreeing to the proposed travel found that the domestic organization had been created, under the laws of the United States, for the sole purpose of assisting its foreign counterpart in the preparation and presentation of its program. The Committee ruled that the domestic organization which was to provide the necessary expenses of foreign travel and the foreign sponsor of the program were sufficiently identical such that the necessary expenses of travel would be excepted from the definition of "gift" under paragraph 2(a) of Rule 35. Therefore, with the approval of the employee's Senate supervisor, the employee could accept the necessary expenses of the proposed travel.

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[14] See Interpretative Ruling No. 105, dated March 9, 1978.

If the employee concerned were required to file a financial disclosure statement under the Ethics in Government Act of 1978, i.e., if he or she were an employee of the legislative branch for more than 60 days and were compensated at a rate equal to or in excess of the annual rate of basic pay in effect for GS-16 of the General Schedule during the calendar year, the employee would be required to report the identity of the source and a brief description of reimbursements received from any source aggregating $250 or more in value which were received during the preceding calendar year.

INTERPRETATIVE RULING NO. 204

Date issued: December 5, 1978

Applicable Rule: 41

Question considered:

May a Senate employee hold a position as a political party's precinct chairman?

Facts:

One of the functions of the position is the periodic solicitation of funds for state and local candidates. While none of these funds go directly to candidates for Federal election, there have been instances when some of the funds were used for literature in support of local, state and Federal candidates. In the case of this "joint campaign" literature, the Federal candidates contribute their own funds to cover their share of the cost of the literature.

Ruling:

The Committee has previously determined[15] that Rule 41's restrictions on staff campaign activities apply to participation in Federal elections and not to state and local elections. So long as the state and local campaign activities are clearly separate and distinct from any activities performed in connection with a Federal election, and the activities do not interfere with Senate duties, a Senate employee would be permitted to participate in them.

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[15] See Interpretative Ruling No. 182, dated September 29, 1978.

The activities proposed in this case do not appear to involve the raising or use of funds for the purpose of supporting Federal candidates. Therefore, the Committee believes Rule 41 would not prohibit those activities.

INTERPRETATIVE RULING NO. 206

Date issued: December 11, 1978

Applicable Rule: 38

Question considered:

Would Rule 38 prohibit a retiring Senator from directing his campaign committee to donate excess campaign contributions to a tax-exempt, charitable organization which would use the funds to create a scholarship fund for graduate students in the Senator's name?

Ruling:

Paragraph 2 of Rule 38 prohibits the conversion of campaign contributions to the personal use of any current or former Senator. While "personal use" is not specifically defined, the Committee does not believe that donation of excess campaign funds to or for the use of a tax-exempt state university to create a scholarship fund for worthy graduate students from the Senator's home state is the type of conversion to personal use prohibited by Rule 38. Similarly, while there may be a nominal or constructive conversion of the funds by the Senator for purposes of inclusion in his gross income for Federal income tax purposes, it may result in a "wash transaction" if an offsetting charitable contribution deduction is available under section 170 of the Internal Revenue Code.

While the Committee ruled that the proposal would not be prohibited by Rule 38, it cautioned that it could express no view as to the consequences of the proposal under the Internal Revenue Code or any other law.

INTERPRETATIVE RULING NO. 207

Date issued: December 11, 1978

Applicable Area: Legislative Branch Appropriations Act

Question considered:

May an employee of one Senate office seek and receive compensation for part-time employment in another Senate office?

Ruling:

The Legislative Branch Appropriation Act of 1978 (Public Law 95-94) section 114, as amended by the Legislative Branch Supplemental Appropriation Act of 1978, section 207, authorized the Senate Disbursing Office to compensate an employee for work done in more than one office of a Senator, Senate officer or standing committee, provided that the employee is paid on a yearly rather than an hourly basis.

No provision of the Code of Official Conduct would prohibit an employee of one Senate office from obtaining a part-time position with another Senate office.

The Select Committee suggested that an employee seeking such an arrangement should notify the supervisor of each position of the employment arrangement.

INTERPRETATIVE RULING No. 208

Date issued: December 13, 1978

Applicable Rule: 37

Question considered:

May a member of a Senate committee serve without compensation on an advisory committee of an organization which is exempt from Federal income taxation and which receives Federal funds through grants administered by an executive branch agency authorized through the same Senate committee? The staffer's Senate duties do not include responsibility for such programs and the advisory committee on which the staffer would serve will neither request nor spend any Federal monies. The staffer's activities would consist of analyzing the goals and internal structures of the organization.

Ruling:

Given the circumstances presented, the Committee has no objection to the staffer's membership on the organization's advisory committee but reminds the supervising Senator that Senate Rule 37, paragraph 3, requires him to take whatever action he may consider necessary for the avoidance of any future conflict of interest or interference with Senate duties.

INTERPRETATIVE RULING No. 212

Date issued: December 22, 1978

Applicable Rule: 35

Question considered:

May a Senate staff member accept travel on a private aircraft of a company having a direct interest in legislation before the Congress where the purpose of the travel is to enable the staffer to inspect the operation of the company's facilities as part of a fact-finding tour?

Ruling:

In Interpretative Ruling No. 35, dated June 28, 1977, the Committee determined that a Senator who is on an official business tour may accept travel on private aircraft and other travel expenses, including lodging and food, from a corporation having a direct interest in legislation, when the corporation's installation or property is the principal subject of the inspection tour, when the corporation is, at least in part, sponsoring the tour, and when the trip is for an official purpose.

In Interpretative Ruling No. 69, dated September 27, 1977, the Committee ruled that fact-finding in connection with matters of direct interest to a Member, his constituents and the sponsoring organization is a service of public office, and the necessary travel expenses in connection with such a trip are excluded from the definition of a gift for the purposes of the limitations on the receipt of gifts from prohibited sources under Rule 35. The Committee further determined that the acceptance of necessary expenses by a staff member designated by the supervising Senator would be permissible in such a situation.

Accordingly, the Committee ruled in this case that the staff member's acceptance of necessary travel expenses in connection with the described fact-finding tour was permissible.

INTERPRETATIVE RULING NO. 213

Date issued: December 22, 1978

Applicable Rule: 37

Question considered:

Would there be a conflict of interest or the appearance of a conflict if a private company were to continue paying part of the salary of one of its employees while the employee worked full-time for a one-year period on the staff of a Senate committee with primary legislative jurisdiction over the activities of the company? Alternatively, would there be a possible conflict of interest if the employee retained his employment relationship with his private company and was also retained, and compensated, by the Senate committee as a part-time consultant?

Ruling:

In the situation presented, a private profit-making organization would pay part of the salary of one of its employees for the individual's services as either a staff member or consultant to a Senate committee with legislative jurisdiction over the activities of the private organization. It is the opinion of the Committee that this arrangement might create the possibility of an actual conflict of interest or the appearance of such a conflict due to the jurisdiction of the Senate committee over matters of interest to the private company.

If the committee wished to hire the individual as a part-time consultant and pay him out of committee funds for his services to the committee, an appearance of a conflict of interest might arise since the indivdual would continue to retain his employment relationship with his private employer. The Committee recognizes that, in certain circumstances, an appearance of a conflict of interest arising from a consultant arrangement might be offset by a Senate committee's need to obtain specific expertise in a given area. The Committee will offer its guidance as to the propriety of such an arrangement where the specialized skills of a particular individual appear necessary.

INTERPRETATIVE RULING NO. 214

Date issued: December 22, 1978

Applicable Rule: 35

Question considered:

May a Member of the Senate accept payment from an entity with a direct interest in legislation before the Congress for expenses he and his spouse incur during a two-day period following the Member's scheduled appearance before the entity? What limitations exist with respect to acceptance of such expenses?

Ruling:

An organization with a direct interest in legislation before the Congress, as this term is defined in paragraph 1(b) of Rule 35, has invited a Senator to speak to the organization's annual convention and subsequently remain at the convention site for an additional number of days to attend various convention activities. The organization has offered to provide the necessary expenses of transportation, food, lodging and entertainment for the Senator and his spouse during the entire time that the Senator is at the convention. In addition, the Senator has scheduled a briefing by a department of the executive branch in the same city for the day following the conclusion of his appearance at the convention.

Under Senate Rule 35 a Member, officer, or employee of the Senate may accept necessary travel expenses from the organization sponsoring his appearance. The Committee has ruled (Interpretative Ruling No. 89, dated November 21, 1977), however, that necessary travel expenses would not include any expenses which are associated with unrelated appearances or activities. Thus, if a second, unrelated appearance requires additional expenses, such as an extra night's lodging, the additional expenses would be subject to the prohibition in Rule 35 on gifts from such organizations aggregating in excess of $100 in a calendar year.

The Committee stated that, if the Senator had remained at the convention for the purpose of participating in convention activities, it would be permissible for the sponsor to cover the necessary expenses incurred in connection with his participation in these activities. If, on the other hand the Senator had remained at the convention solely for the purpose of attending the briefing, or any other unrelated activity, the additional expenses would be deemed to have been incurred in connection with the second activity and, if paid by the sponsor of the first appearance, would be subject to the provisions of Rule 35, as noted above.

INTERPRETATIVE RULING NO. 215

Date issued: December 23, 1978

Applicable Area: Nepotism

Question considered:

An individual who is considering employment in a Member's office asked if it would be permissible to accept such a position where the spouse of the Member is a cousin of one of the individual's parents.

Ruling:

While this Committee is not charged with the responsiblity of enforcing Section 3110 of Title 5 of the United States Code, which prohibits a public official (including Members of Congress) from employing or advocating the employment of a relative in the agency in which he is serving, (an office, agency or other establishment in the legislative branch is included within the definition of an agency), the Committee noted that, for the purposes of Section 3110, a "relative" is defined as:

> . . . an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

Thus, the stated relationship to the Member would not fall within the prohibitions of Section 3110.

Moreover, based on the facts described, the Committee concluded that employment in the Member's office would not constitute improper conduct which may reflect upon the Senate, nor would it present the appearance of a conflict of interest.

INTERPRETATIVE RULING NO. 216

Date issued: January 5, 1979

Applicable Area: Foreign Gifts and Decorations Act

Question considered:

When a Senator is visiting a foreign country on official business, may he accept transportation, lodging and hospitality from the host country in order to visit areas within that country when no commercial transporation service is available or in circumstances when it would be an affront to the host government to refuse the hospitality?

Ruling:

The Foreign Gifts and Decorations Act, 5 U.S.C. section 7342, permits the acceptance from foreign governments of gifts of travel or expenses for travel taking place entirely outside the United States if such acceptance is appropriate, consistent with the interests of the United States and is permitted by the Senate Select Committee on Ethics (as the employing agency for Members, officers, and employees of the Senate).

The Committee has determined that the acceptance of such gifts of travel or expenses for travel (including transportation, food and lodging), under the circumstances described above, would be appropriate and consistent with the interests of the United States. Such a determination is made by the Committee on a case-by-case basis, after a review of the facts of each instance.

Within 30 days after any Member, officer, or employee of the Senate (or his or her spouse or dependents) has accepted travel or travel expenses for travel taking place entirely outside the United States, such Member, officer, or employee must file a statement of information with the Select Committee.

INTERPRETATIVE RULING NO. 217

Date issued: January 15, 1979

Applicable Rules and Area: 34, 35, Ethics in Government Act of 1978

Question considered:

May a group of Senate employees, who work for different Senators and Senate committees but share responsibilities for energy issues, accept an invitation from an oil producers group and a local Chamber of Commerce to attend a meeting to discuss energy problems and potential legislation, where the Chamber has offered to provide all of the necessary expenses connected with the meeting?

Ruling:

Rule 35 on Gifts excludes from the definition of a gift the payment of the necessary expenses in connection with the performance of services for an organization by a Senate staff assistant, incident to his official duties, including travel, food and lodging, if those expenses are paid by the organization for which the services are performed.

Fact-finding in connection with matters of direct interest to Members and committees of the Senate, sponsored and paid for by organizations such as a local Chamber of Commerce, is directly related to the Senate duties of staff persons working for such Members and committees. Accordingly, the acceptance of the invitation and related necessary expenses from the Chamber of Commerce would not be in violation of Rule 35.

The Committee noted that any staff member required to file a public financial disclosure statement must report the identity of the source and a brief description of reimbursements received from any source aggregating $250 or more in value during a calendar year.

INTERPRETATIVE RULING NO. 218

Date issued: January 15, 1979

Applicable Rule: 37

Question considered:

What are the restrictions on a former Senate employee's communicating with the Members and staff of a committee for which he used to work? The employee plans to begin the practice of law, and his responsibilities might include occasional discussions with Senators on behalf of a client regarding certain proposals of interest to the client.

Ruling:

A Senate committee staffer who leaves a committee position and becomes a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or is retained by such a registered lobbyist for the purpose of influencing legislation is prohibited by paragraph 9 of Rule 37 from lobbying Members and staff of the committee for which he or she worked for one year after leaving the committee position. "Lobbying" is defined in paragraph 10(c) of Rule 37 as any oral or written communication to influence the content or dispositon of any issue before Congress.

The Federal Regulation of Lobbying Act of 1946 applies to "any person . . . who . . . receives money or any other thing of value to be used principally to aid, or the principal purpose of which person . . ." is to aid or influence the passage or defeat of any legislation by the Congress of the United States (2 U.S.C. 266) and is not applicable to those persons having only an incidental purpose of influencing legislation. (*United States* v. *Harriss,* 347 U.S. 612, 622 (1954).) One who does not meet the "principal purpose" test of the Lobbying Act (i.e., who has only an incidental purpose of influencing legislation) is not required by the Act to register as a lobbyist; consequently, the restrictions of paragraph 9 would be inapplicable to such persons.

However, failure to register under the Lobbying Act when required to do so would not render inapplicable the restrictions in paragraph 9. The Committee believes that if one is engaged in the types of activities regulated by the Lobbying Act, but fails to register under the Act, paragraph 9 of Rule 37 would nevertheless apply to such a person.

The Committee noted that it has previously ruled that if one or more partners or an associate of a law firm is a lobbyist, then a former Senate employee, if hired in any capacity by that firm, is subject to the one-year lobbying restrictions.

INTERPRETATIVE RULING NO. 220

Date issued: January 24, 1979

Applicable Rule: 38

Question considered:

May a Senator accept and use audio and visual tapes which belonged to former Members of Congress? May a Senator accept two free newspaper subscriptions each of which is worth in excess of $100 per yearly subscription?

Ruling:

Senate Rule 38 prohibits the acceptance of certain funds from outside sources to defray expenses incurred by a Senator in connection with official duties. This prohibition includes the receipt of in-kind contributions of goods and services.

However, exceptions to the rule have been allowed for goods and services provided to a Member by other Members of Congress and by agencies of the Federal government.[16] The acceptance and use of tapes belonging to the former Member would be permissible since it falls within the exception for goods provided by other Members of Congress. The acceptance of free newspaper subscriptions, however, would be contrary to earlier Committee rulings which prohibited the acceptance of "in-kind" contributions from any source not listed in Rule 38.

INTERPRETATIVE RULING NO. 221

Date issued: January 29, 1979

Applicable Rules: 34, 35, and 37

Question considered:

May a Senate staff member travel to Paris for an international conference at the expense of a United States association that is also taking part in the conference? The staff member's supervisor has given his approval for the trip.

Ruling:

Rule 35, which prohibits the acceptance of certain gifts, exempts from the definition of "gift" the necessary expenses of travel incident to the performance of one's Senate duties, if paid for by a domestic organization for which the services are performed. Therefore, such travel undertaken at the request of the domestic association would not be a "gift" for purposes of Rule 35.

With respect to Rule 37 (Conflict of Interest), the Committee has ruled that it is the responsibility of one's supervisor to make the initial judgment that an outside activity presents no conflict of interest either with respect to the time required to engage in the activity or due to the nature of the activity itself. Based upon the facts presented, this Committee has no reason to disagree with the supervisor's approval of this trip.

If the staff member is required to file a financial disclosure statement under Rule 34 (Title I of the Ethics in Government Act of 1978), the necessary travel expenses provided by the association must be reported as a reimbursement if the value of the reimbursement provided by the association was in excess of $250.00.

INTERPRETATIVE RULING NO. 224

Date issued: January 30, 1979

Applicable Rule and Area: 41, Ethics in Government Act of 1978

Question considered:

Are there circumstances under which the Committee would waive the applicability of the Code of Official Conduct, pursuant to paragraph 5 of Rule 41, regarding an individual hired by a Senate committee for a limited period of time on a per diem basis?

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[16] See Interpretative Rulings No. 72, dated September 29, 1977, No. 195, dated October 18, 1978 and No. 196, dated October 26, 1978.

Ruling:

A Senate committee was in need of technical expertise on a specific problem and agreed to hire, on a per diem basis, several individuals from private industry, who have a specific expertise in the area of concern. These individuals were to be employed by the committee for a very short period of time in the course of their undertaking for the committee.

The Select Committee concluded that, based upon the unique qualifications of the individuals and the limited time period of their proposed employment, a waiver from the applicability of the Code of Official Conduct was appropriate.

The Committee noted, however, that the Ethics in Government Act of 1978, Public Law 95–521, requires that any individual who is an officer or employee of the legislative branch during any calender year and performs the duties of his position or office for a period in excess of sixty days in that calendar year and who is compensated at a rate equal to or in excess of the annual rate of basic pay in effect for GS–16 of the General Schedule, must file a financial disclosure statement with the Secretary of the Senate on or before May 15 or the succeeding year. If a reporting individual were to begin his duties on or after January 1, 1979, section 101(c) of the Act would require such an individual to file a "limited" financial disclosure statement within 30 days of assuming the new position. While this requirement is apparently ambiguous with respect to the requirement of section 101(c) of the Act that disclosure need only be made by those individuals who perform the duties of their positions for more than 60 days in a calendar year, the Select Committee has interpreted section 101(c) to only require limited disclosure, within 30 days of assuming their positions by those employees who begin work on or after January 1, 1979 and who have committed themselves to work or who reasonably believe that they will be working for more than 60 days in the calendar year.[17]

The Committee further held that should circumstances change after these individuals begin their assignments with the Senate committee, and they either make a specific commitment or come to reasonably believe that they will be working for 60 days or more, these individuals would be required to file disclosure statements pursuant to section 101(c) of the Act immediately upon learning of the changes in their employment arrangements. The Act defines an "officer or employee of the Senate" as an individual, other than a Senate or the Vice President, whose compensation is disbursed by the Secretary of the Senate. The Act contains no authority by which this Committee could grant a waiver of the reporting requirement.

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[17] Subsequent to this ruling, the interpretation was enacted as an amendment to the Ethics in Government Act of 1978 by Public Law 96–19.

INTERPRETATIVE RULING NO. 226

Date issued: January 30, 1979

Applicable Rule: 38

Question considered:

May a Member use excess campaign funds from his or her principal campaign committee to defray the costs, incurred in moving to Washington, D.C., as a newly-elected Senator, as well as the cost of holding receptions and breakfasts for constituents?

Ruling:

The use of campaign funds is governed by both the Federal Election Campaign Act and Senate Rule. 2 U.S.C. 439a permits such funds to be used for "any lawful purpose", including the ordinary and necessary expenses incurred in connection with one's duties as a holder of federal office. In addition, Senate Rule 38 allows Senators to defray unreimbursed but official office expenses from "funds derived from a political committee", although no campaign contributions may be converted to the "personal use" of any Member. "Personal use", as that term is used in rule 38 does not include reimbursement of "expenses incurred by a Member in connection with his official duties."

The Committee concluded that, for the purpose of Rule 38, both the cost of moving to Washington, D.C., as a newly-elected Senator, and the cost of holding receptions and breakfasts as a public service to constituents, are the kinds of expenses which are incurred by a Member in connection with his or her official duties. Consequently, campaign funds from a Member's principal campaign committee may be used to pay these expenses, either directly or as a reimbursement, should the Member pay the expenses from personal funds initially.

The Committee noted that this interpretation of paragraph 2 of Rule 38 has no bearing on the question of what kinds of expenses are "official expenses" as that term may be defined by the Senate Rules Committee or the Senate Disbursing Office.

The Committee expressed no view as to the consequences of this proposal under Section 217 of the Internal Revenue Code.

INTERPRETATIVE RULING NO. 227

Date issued: January 30, 1979

Applicable Rule: 37

Question considered:

May a Senate employee, whose Senate subcommittee responsibilities include work on oversight and authorization legislation concerning the Federal government's school lunch program, undertake outside professional activity in the form of service on an advisory committee of a state government department which promotes the use of agricultural products grown in the state through various school nutrition programs?

Facts:

The advisory committee has been established to review educational materials and to comment on proposed projects for the department relative to a state-sponsored program which relies, in part, upon Federal assistance. The Federal assistance is authorized by legislation which is handled by the employee's subcommittee. The department has proposed to provide the Senate employee with an "honorarium" of $500 and expenses for the employee's attendance at each meeting of the advisory committee.

Ruling:

While the remuneration to be provided by the department is characterized by the payor as an "honorarium", the Committee concluded that the arrangement was compensation for recurring professional services.

Paragraph 2 of Rule 37 directs that no employee of the Senate shall engage in any outside professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of that employee's official duties. In this factual situation, the Committee ruled that because of the nature of the employee's responsibilities with the employing Senate subcommittee, acceptance of the invitation to serve on the advisory committee could lead to an actual conflict or the appearance of a conflict of interest with the employee's conscientious performance of Senate duties.

INTERPRETATIVE RULING NO. 229

Date issued: February 7, 1979

Applicable Rules and Area: 34, 37, Federal Election Campaign Act

Question considered:

May a Senate committee staff member re-write a chapter of a legal manual, which work will be done after regular office hours and for which compensation will be $300? The Committee for which the staff member works has no oversight or authorization responsibilities for the funding of the program for which the manual is being written.

Ruling:

The Committee concluded that the Code of Official Conduct does not preclude this activity. Payment received for re-writing a chapter would be considered an "honorarium" and therefore would be subject to provisions of 2 U.S.C. 441(i), the Federal Election Campaign Act, which limits the amount of honoraria which employees of the Federal government may receive and the Ethics in Government Act which requires disclosure of the receipt of such honoraria.

Interpretative Ruling No. 230

Date issued: February 23, 1979

Applicable Rule: 37

Question considered:

May a Senator remain on a seniority list maintained by a former employer? The Senator would no longer be considered an employee, would receive no compensation or other benefits, and would not be serving on any committee or subcommittee having legislative or oversight responsibilities for the former employer's industry.

Ruling:

Given these particular circumstances, the Committee concluded that such an arrangement neither violates any provision of the Senate Code of Official Conduct, nor would it appear to give rise to an actual or apparent conflict of interest.

Interpretative Ruling No. 231

Date issued: February 26, 1979

Applicable Area: Franking

Question considered:

May a Senator use the mailing frank to send a statement and an excerpt from the *Congressional Record* concerning a Constitutional amendment to state legislators throughout the country?

Ruling:

Section 3210(a)(3)(A) of Title 39 of the United States Code authorizes the franking of mail matter "to any person and to all agencies and officials of Federal, State and local governments regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress." In addition, section 3210(a)(3)(E) specifically authorizes the franking of "mail matter directed by one Member of Congress to another Member of Congress or to representatives of the legislative bodies of State and local governments."

The Committee ruled that the material is frankable mail matter under Section 3210 since it directly pertains to matters affecting the functioning, working or operating of the Congress and relates to actions of a past Congress.

Interpretative Ruling No. 232

Date issued: March 2, 1979

Applicable Rule: 40

Question considered:

Is an elected member of the Agricultural Stabilization and Conservation Service considered to be a "government official" as that term is used in Senate Rule 40 for purposes of the provisions relating to mass mailings?

Ruling:

In its Interpretative Ruling No. 117, dated April 10, 1978, the Committee defined "government officials", as used in Rule 40, paragraph 4, as follows:

> Government officials (whether Federal, state or local) include any elected or appointed official of the United States and of any state or territory or a political subdivision thereof.

The Committee understands that, under 16 U.S.C. 590h(b), members of the A.S.C.S. are either popularly elected, elected by local, county or state A.S.C.S. committees, or appointed by the Secretary of Agriculture. Therefore, members of the Agricultural Stabilization and Conservation Service would fall under the definition of "government official" and thus mailings addressed to them would not be required to be registered under Rule 40, paragraph 3.

INTERPRETATIVE RULING NO. 233

Date issued: March 9, 1979

Applicable Rule: 37

Question considered:

May a lawyer continue to represent several clients in connection with certain cases after that individual has become a Senate employee? The cases in question are either personal injury cases or matters relating to estate planning and administration. The cases do not conflict with the employee's work for the Senator and the work will not be done during regular Senate office hours.

Ruling:

Senate Rule 37, paragraph 3, requires that the supervisor of a Senate employee make the initial judgment as to whether a proposed outside business or professional activity would present a conflict of interest because of either the time required by the activity or the nature of the activity itself. Paragraph 3 of Rule 37 further requires that the supervisor take such steps as are considered necessary for the avoidance of conflict or interference with an employee's duties to the Senate. Senate Rule 37, paragraph 5, provides that no Member or Senate employee compensated at a rate in excess of $25,000 a year and employed in excess of 90 days in a calendar year may:

(a) affiliate with a firm, partnership, association, or corporation for the purposes of providing professional services for compensation;

(b) permit the individual's name to be used by such a firm, partnership, association or corporation; or

(c) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed.

The Committee noted in a previous Interpretative Ruling, that this provision restricts, but also contemplates, some practice outside office hours or on annual leave time.[18]

In this situation, the Committee concluded that it would be proper for the Senate employee to finish work on those cases which have been described so long as the individual does so as a sole practitioner of law, i.e., not in connection with a law firm. Specifically, the employee's name should not be used by a law firm nor should he receive any partnership proceeds from a law firm for work done by him after he has begun Senate employment. In addition, after beginning work as a sole practitioner, it would not be deemed improper for him to distribute to the law firm a portion of any fees earned in connection with those cases begun when he was a partner of the firm, if that portion of the fees distributed to the firm is pursuant to a financial arrangement which existed before he left the firm.

INTERPRETATIVE RULING NO. 234

Date issued: March 14, 1979

Applicable Rules: 34 [19] and 35

Question considered:

May a Senate employee accept an invitation to visit a foreign country at the expense of a private, non-profit foreign organization for the purpose of attending meetings with local business leaders and government officials to discuss matters relating to the employee's official Senate duties?

Ruling:

Rule 35 of the Senate Code of Official Conduct prohibits the acceptance of gifts exceeding $100 in value from a foreign entity. However, the definition of "gift" does not include payments for which consideration of equal or greater value is received by the donor. The Committee finds that the staff member's participation in the meeting sponsored by the organization would constitute consideration for the travel expenses to be paid by the organization. Under these circumstances, the acceptance of the travel expenses would not be prohibited by Rule 35.

The expenses received in connection with this trip must be reported as earned income under Senate Rule 34. Furthermore, if the employee is required to file a financial disclosure statement under P.L. 95-521, Ethics in Government Act of 1978, he will be required to report the identity of the source and a brief description of reimbursements received from any source with an aggregate value of $250 or more for the calendar year.

Additionally, the Foreign Gifts and Decorations Act (5 U.S.C. Section 7342) limits the acceptance by Members, officers and employees of the United States Senate (and their spouses and dependents) of certain tangible gifts and gifts of travel or expenses for travel from a foreign government. Certain reporting requirements are imposed upon Members, officers and employees who accept gifts from a foreign government pursuant to the provisions of the Act.

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[18] Interpretative Ruling No. 70, dated September 29, 1977.

[19] Subsequent to this ruling, the Senate passed (August 3, 1979) S. Res. 220 striking Rule 34 and putting in its place a new Rule 34 consisting of the provisions of Title I of The Ethics in Government Act of 1978.

INTERPRETATIVE RULING NO. 236

Date issued: March 19, 1979

Applicable Area: Franking

Question considered:

What is the definition of a "page" for purposes of the personal reference rule in the Franking Regulations, which limits personally phrased references to a Senator in a franked mailing to no more than five per page?

Ruling:

The Committee has determined that a "page" for purposes of the limitation on the number of personally phrased references to a Senator in a franked mailing, is each side of an 8½″ × 11″ or 8½″ × 14″ sheet of paper, irrespective of the number of folds utilized in the design of the matter mailed. Thus, if a newsletter is on a legal-size sheet of paper and has print on both sides, it would be a two-page newsletter for purposes of the franking regulations, even if the paper were folded to resemble a four-page "pamphlet". The Committee noted that this interpretation is in accord with the definition of a sheet of paper used by the Committee on Rules and Administration for purposes of Members' paper allowances.

INTERPRETATIVE RULING NO. 237

Date issued: March 21, 1979

Applicable Rule: 37

Question considered:

Is it proper for a Senator to write to a Federal Bankruptcy Judge for the purpose of a motion submitted to the Judge by a group of constituents?

Facts:

A corporation doing business in the Senator's State is undergoing reorganization proceedings under the Bankruptcy Act. An Association of employees and users of the Corporation's services in the State has filed a motion to intervene in the Bankruptcy Court proceedings, and the Senator states that the Association has asked him to contact the Bankruptcy Judge to express his support for the motion. The Member also states that while he supports the intervention by the Association on its merits, he is concerned that direct involvement might be an improper use of Senatorial influence.

Ruling:

The Member does not indicate that he intends to become a party in the matter or that he intends to submit an *amicus curiae* brief in conformity with the Court's rules of procedure. Accordingly, the Committee determined that it would be improper for the Member to contact the Bankruptcy Judge in the manner outlined because the manner in which the Senator chose to make his views known to the court was outside the formal procedure established by the court.

INTERPRETATIVE RULING NO. 238

Date issued: March 26, 1979

Applicable Rule and Area: 37, Ethics in Government Act of 1978

Question considered:

Would there be an actual or apparent conflict of interest if a committee were to hire, on a per diem basis for a maximum of 60 days, an attorney from a law firm to work exclusively on a single piece of legislation? The attorney would have no other duties or responsibilities as regards any other legislation which might come before the committee. If neither an actual nor an apparent conflict were found, would a waiver from the applicability of paragraph 9 of Rule 37, the Post-Employment Lobbying Restriction, be appropriate?

Facts:

The Select Committee was informed of the following facts: (1) that in the past, certain individuals in the attorney's law firm had been registered under the Regulation of Lobbying Act of 1946; the Select Committee determined that neither the attorney nor any other person associated with his firm were currently registered; (2) that the attorney currently serves as outside counsel to a tax-exempt organization which is engaged in a number of public policy research studies, including one in the area of products liability; the Select Committee determined that while legislation affecting products liability laws has been introduced in the past and may be reintroduced in the current Congress, any legislation would not be referred to the attorney's committee, the tax-exempt organization would have no financial interest in such legislation, the organization is restricted by the Internal Revenue Code with respect to its lobbying activities, and the attorney's duties with the committee would not involve any work or products liability legislation; (3) that the attorney represents several beneficiaries of a trust which has an interest in a Federal condemnation proceeding now underway in a state; the Select Committee determined that while the bulk of funds necessary to effect the condemnation had already been appropriated, an additional appropriation might be sought during the current year and that if this were the case, the attorney's committee would have no responsibility for such an appropriation; (4) that the attorney's law firm is representing a client who is pursuing a claim against the United States for the death of the spouse and the firm may seek the introduction of a private bill of relief in the

Senate; the Select Committee determined that if such a private relief bill were introduced, although it would be referred to the attorney's committee, the firm agreed that any recovery from such a private bill would be handled on a "pro bono" rather than contingent fee basis and the attorney would not involve himself in any way with the committee's review of the matter.

Ruling:

Based upon these factual determinations, the Select Committee ruled that it did not appear that the attorney's duties to his law firm would present either an actual conflict or the appearance of a conflict of interest with his responsibilities to the committee which proposes to hire him. However, the Select Committee reminded the inquiring Senator, who would supervise the attorney, that paragraph 3 of Rule 37 on Conflict of Interest prohibits a Senate employee from engaging in any outside business or professional activity or employment for compensation unless he has described such activity in writing to his supervisor. The rule also places a continuing responsibility on the supervisor to take such action as is necessary for the avoidance of conflict of interest. Thus, any change in the attorney's activities, or those of his law firm and its clients, would be a critical consideration during the time the attorney is employed by the committee.

The Select Committee also addressed the request for a waiver of the post-employment lobbying restriction found in paragraph 9 of Rule 37, which is applicable to all Senate employees, including those who are hired as consultants on a per diem basis. Paragraph 5 of Rule 41 authorizes the Select Committee, in its discretion, to grant waivers from the applicability of any provision of the Code of Official Conduct to an employee hired on a per diem basis, "in exceptional circumstances for good cause shown." Should circumstances arise during the period of the prohibition of paragraph 9 of Rule 37, the Committee stated it would consider the appropriateness of a waiver. The Committee said it did not believe a waiver was intended to be used as an inducement to employment against the possibility that an exceptional circumstance might arise at some future time.

The Select Committee also reminded the inquiring Senator that Section 101(c) of the Ethics in Government Act of 1978, Public Law 95–521, requires that a reporting individual who begins his duties with the legislative branch on or after January 1, 1979, must file a "limited" financial disclosure statement within thirty days of assuming the new position. However, the Select Committee has interpreted this provision to apply to employees who have committed themselves to work or who reasonably believe that they will be working for more than sixty days in the calendar year. The Select Committee stated that should circumstances change and the attorney in question becomes aware that he would be working for more than 60 days, he would become obligated to file the required financial disclosure statement immediately upon learning of the changes in his employment arrangement.[20]

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[20] Subsequent to this ruling, the interpretation was enacted as an amendment to the Ethics in Government Act of 1978 by Public Law 96–19.

In response to his specific request that any additional Federal laws or regulations pertaining to the hiring of the attorney be cited, the Senator was informed that 18 U.S.C. 203(a)(2), a criminal statue under the jurisdiction of the Department of Justice, would appear to restrict officers and employees of the United States (including the legislative branch) from involvement in proceedings in which the United States is a party. However, the Select Committee noted that the statute provides an exception for certain individuals who are defined as "special government employee", and that the Senate might wish to consider whether the attorney would fall within that statute and thus not be subject to the limitation.

INTERPRETATIVE RULING NO. 239

Date issued: March 26, 1979

Applicable Rules: 34 and 40

Question considered:

May a Senator use the Senate computer facilities to record information necessary for disclosing the receipt of gifts under Senate Rule 34?

Ruling:

Rule 40, paragraph 5, prohibits the use of the Senate computer facilities to store, maintain, or otherwise process lists of names and addresses which identify individuals as campaign workers or contributors, as members of a political party, or by any other partisan political designation. The Committee has previously ruled that this requirement means that records may not be sorted selectively with the intent of targeting mailings to likely election supporters.

With regard to the keeping of records and administrative details necessary to ensure compliance with the financial disclosure requirements rule, the Committee has ruled that staff members may assist a Senator with these duties to the extent reasonably necessary to assure compliance, since such compliance is a Senate duty.[21]

Likewise, the Committee believes that, if authorized by the Rules Committee, the storing and processing of information for the purpose of complying with a Rule of the Senate, for example, reporting the receipt of gifts, would not be prohibited by Rule 40, paragraph 5.

INTERPRETATIVE RULING NO. 240

Date issued: March 29, 1979

Applicable Area: Foreign Gifts and Decorations Act

Question considered:

Under what circumstances may a Senator accept a decoration from a foreign government?

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[21] See Interpretative Ruling No. 60, dated September 13, 1977.

Ruling:

Article I, Section 9, Clause 8 of the United States Constitution provides that no officer or employee of the Federal government shall accept any gift or decoration from any foreign state "without the consent of the Congress."

Under the Foreign Gifts and Decorations Act (5 U.S.C. Section 7342) (the Act), Congress has consented to the accepting, retaining and wearing of decorations by employees of the United States, subject to the approval of the employing agency, which are "tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance." Without the approval of the employing agency, a decoration is deemed to have been accepted on behalf of the United States, and becomes the property of the United States. The decoration must then be deposited with the employing agency within sixty days of its acceptance.

The Select Committee on Ethics has been designated as the employing agency under the Act for Members, officers, and employees of the United States Senate for the purpose of approving the accepting, retaining, and wearing of decorations. In the opinion of the Committee determining whether the decoration meets the statutory standard cited above can best be done after it has had an opportunity to review the citation accompanying the award of the decoration. The Committee believes, therefore, that it would be appropriate to receive the decoration with the understanding that the question as to whether the decoration may be retained or worn will be made by the Committee upon its receipt of a copy of the citation or such other supporting documentation as may be available.

INTERPRETATIVE RULING NO. 241

Date issued: March 29, 1979

Applicable Rules: 38 and 40

Question considered:

Is it permissible for a non-profit, non-partisan educational and business organization to print and affix mailing labels to envelopes bearing a Senator's frank to be used in a mass mailing to members of that organization in that Senator's state?

Ruling:

Senate Rule 40.2 requires that only official Senate funds be used "to purchase paper, to print, or to prepare any mass mailing which is to be sent out under the frank." Additionally, Senate Rule 38 prohibits the use of funds or in-kind contributions of goods or services from sources other than those enumerated in the Rule to defray expenses incurred by the Members in connection with his official duties.

The Committee has ruled that in-kind services provided by Federal agencies are not subject to the prohibitions of Rule 38 discussed above or of Rule 40.2, if such services are generally available to all Members of the Senate.[22] However, these exceptions to Senate Rule 38 and Rule 40 would not be applicable in this case. Accordingly, a Senator must reimburse an outside organization, out of official Senate allowances, for the reasonable cost of the labels and of the printing and labeling services provided by that organization in connection with a franked mass mailing.

The Committee further noted that, in Interpretative Ruling No. 66, dated September 26, 1977, it ruled that the affixing of mailing labels, by an outside organization, on franked envelopes which previously had been stuffed and sealed in the Senate would constitute a transfer of franked envelopes in violation of Section 3215 of Title 39 of the United States Code. That provision states that "a person entitled to use a frank may not lend it or permit its use by any committee, organization, or association not itself entitled to use the frank." In the Committee's view, the opportunity for misuse or diversion of franked envelopes, even though previously stuffed and sealed by the Senate Service Department, is so great as to be tantamount to a loan of the frank.

The Committee has also ruled in Interpretative Ruling No. 196, however, that it would be permissible for labels to be affixed by an outside organization to unstuffed and unsealed frank envelopes if the labeling process is carried out under the supervision of a member of a Senator's staff and in such a manner as to avoid any misuse which could constitute an improper loan of a frank. The franked envelopes should then be returned to the Senate under the supervision of a Senate staff member for stuffing and mailing.

The Committee also points out that in preparing any mail matter to be sent out under the frank, care must be taken to avoid giving the impression that the outside organization is in any way sponsoring the mailing, since to do so would constitute an improper loan of the frank.

INTERPRETATIVE RULING NO. 242

Date issued: March 29, 1979

Applicable Area: Advisory Opinion on Use of Letterhead

Question considered:

May a Senate employee use his official Senate title on the letterhead of a mailing which solicits funds for a college, where the college will defray the costs involved in the solicitation? The first page of the letter contains a statement that the letter is not printed at government expense.

Ruling:

The Committee found that the inclusion of the employee's Senate title on the solicitation letterhead would not violate the Code of Official Conduct.

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[22] Interpretative Ruling No. 196, dated October 26, 1978.

INTERPRETATIVE RULING NO. 243

Date issued: March 29, 1979

Applicable Rules and Area: 34, 37, and Ethics in Government Act of 1978

Question considered:

May a Senator participate, without compensation, on the Advisory Board of a tax-exempt educational institution?

Ruling:

Senate Rule 37 prohibits Members, officers, and employees of the Senate from engaging in any outside business or professional activity which is inconsistent or in conflict with the conscientious performance of official duties. It is the Committee's understanding that the particular institution is an independent organization, is not affiliated with any other organization or group and does not seek Federal funds for any of its activities. Based on these circumstances, the Committee held that a Senator's participation on the board of such an institution would not be in violation of any specific provisions of the Senate rules, nor would it, in and of itself, present any actual or apparent conflict of interest.

The Committee noted that a Senator's membership on such a board would be reportable under Senate Rule 34 (Title I, Ethics in Government Act).

INTERPRETATIVE RULING NO. 244

Date issued: April 3, 1979

Applicable Rule: 37

Question considered:

Is a privately owned corporation that is set up to own and operate a radio station a "publicly regulated corporation or business entity" within the meaning of Senate Rule 37, paragraph 6? Paragraph 6 of Rule 37 states:

> No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall serve as an officer or member of the board of any publicly held or publicly regulated corporation, financial institution, or business entity. . .

Ruling:

The Committee stated that the definition of "publicly regulated" corporations includes those corporations regulated by Federal agencies which affect an entire industry. Thus, a privately held corporation set up to own and operate a radio station would be considered a "publicly regulated" corporation for the purposes of Rule 37, paragraph 6, since the communications industry is regulated by the Federal Communications Commission.

The Committee also noted that paragraph 6 permits Members, officers, and employees of the Senate to serve without compensation on the boards of organizations which are exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, and to serve on any other boards if (1) the Member, officer, or employee had served continuously as a board member for at least two years prior to his or her most recent election or appointment to the Senate, (2) the amount of time required to perform such service is minimal, *and* (3) the individual is not a member of, or a member of the staff of, any Senate committee which has legislative jurisdiction over any agency of the government charged with regulating the activities of the corporation, institution, or other business entity.

INTERPRETATIVE RULING NO. 246

Date issued: April 9, 1979

Applicable Rule: 37

Question considered:

Is it improper for a Senator to receive an honorarium paid wholly out of funds appropriated by Congress?

Ruling:

By itself, the payment of honoraria from funds appropriated by Congress appears to violate no law or provision of the Senate Code of Conduct. However, the specific circumstances surrounding the receipt of a particular honorarium could raise questions as to the propriety of the arrangement. In order to make a determination as to whether such circumstances exist, the Committee would need to know the relevant details in a particular instance.

INTERPRETATIVE RULING NO. 247

Date issued: April 11, 1979

Applicable Rule: 34

Question considered:

Is a former Senator required to disclose the assets of a qualified blind trust if the trust is dissolved? May a Senator withdraw documents submitted to the Ethics Committee and the Secretary of the Senate concerning a blind trust after his or her Senate service has ended?

Ruling:

The Committee has concluded that the provision of Rule 34 which requires the public disclosure of trust assets when a qualified blind trust is dissolved is applicable only to a trust dissolved during a Senator's term of office. Where a qualified blind trust is dissolved after Senate service ends, Rule 34 does not require public disclosure of the trust assets.

Pursuant to their duties required by the Ethics in Government Act, the Ethics Committee and the Secretary of the Senate will retain documents submitted to them concerning the qualified blind trust.

INTERPRETATIVE RULING NO. 248

Date issued: April 27, 1979

Applicable Rules: 38 and 41

Question considered:

May a Senator hire a summer intern who would be compensated from funds derived from the Senator's principal campaign committee of the previous year?

Ruling:

Rule 38 authorizes the defrayal of expenses incurred in connection with official duties from four specified sources, including funds derived from a political committee, as defined in Section 301(d) of the Federal Election Campaign Act of 1971.

As a result of discussions with the Committee on Rules and Administration and the Senate Disbursing Office, the Committee understands that technically an individual compensated by funds from a Senator's principal campaign committee would not be an employee of the Senate and thus would not be eligible for a Senate identification card, insurance, income tax withholding or social security/retirement withholding. It would appear that such an individual would be the personal employee of the employing Senator. However, for purposes of the Senate Code of Official Conduct, any individual whose services are utilized by a Member on a full-time basis for more than 90 days will be deemed to be an employee of the Senate. An individual whose services are used for this period of time is required by paragraph 4 of Rule 41 to agree in writing to comply with the Code of Official Conduct in the same manner and to same extent as an employee of the Senate.

INTERPRETATIVE RULING NO. 249

Date issued: April 27, 1979

Applicable Area: Franking

Question considered:

May a Senator make use of the mailing frank for sending "express mail" from his/her office?

Ruling:

While nothing in the statute authorizing the use of the mailing frank, 39 U.S.C. 3210, *et seq.,* would prohibit the use of the frank for "express mail", the Senate Postmaster has indicated that, because of practical considerations, such use could not be authorized at this time. He has further stated that in order for the mailing frank to be utilized in this manner, the Postal Service would first have to to establish a special unit to monitor the use of the frank for this and other "special services", including registered, certified, insured, and special delivery mail.

INTERPRETATIVE RULING NO. 251

Date issued: April 27, 1979

Applicable Rules and Area: 34, 35, 38, and Ethics in Government Act of 1978

Question considered:

May a Senator accept an unsolicited gift of certain newspapers which have been provided to him on a daily basis via courier, by a company engaged in the air courier and air freight business?

Ruling:

Senate Rule 38 prohibits the acceptance of funds (other than personal and campaign funds) to defray expenses incurred by a Senator in connection with his official Senate duties. The Committee has consistently ruled[23] that in-kind contributions of goods and services by outside sources for official expenses are subject to the prohibitions of Rule 38. In response to the present question, the Committee ruled that if unsolicited donations of newspapers (including postage or air freight charges, if any) were not contributions to "expenses incurred by a Member in connection with the performance of his official duties", they would not be subject to the prohibitions of Rule 38. Acceptance of such gifts of goods and services would be permissible, as long as the donor is not a prohibited source within the meaning of Paragraph 1(b) of Rule 35, or the aggregate value of the gifts received from a donor who is a prohibited source does not exceed $100 in a calendar year.

In determining the value of such donations for the purposes both of Rule 35 and of Rule 38, where applicable, the Committee ruled that the value of goods and services received would be the retail or fair market value of the goods or services, rather than the cost to the donor of providing such goods or services. The Committee noted that such gifts may be reportable under Senate Rule 34 (Title I of the Ethics in Government Act of 1978).

INTERPRETATIVE RULING NO. 252

Date issued: April 27, 1979

Applicable Rules: 34 and 35

Question considered:

May a Senate staff member accept from a corporation a $500 cash award which is given annually as a public service to ten professional conservation workers and to ten persons who have done outstanding volunteer work?

Ruling:

Rule 35, which prohibits the acceptance of certain gifts from persons and corporations having a direct interest in legislation before the Congress, defines the term "gift" to exclude "a bona fide award presented in recognition of public service and available to the general public." The Committee concluded that this exclusion applies to the cash award which has been described, so long as the recipients were chosen from the general public.

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[23] See Interpretative Ruling No. 199, dated November 6, 1978; No. 44, dated July 18, 1977; No. 43, dated July 13, 1977; No. 38, dated June 29, 1977; and No. 16, dated May 23, 1977.

If the staff member is a reporting individual under Rule 34, the cash award would be reported as a gift.

INTERPRETATIVE RULING NO. 253

Date issued: May 7, 1979

Applicable Rule: 38

Question considered:

Is it proper for a Senator to establish a bank account to be used exclusively as a repository for funds derived from outside earned income? The account would be used to pay expenses related to his or her official duties which are not reimbursable through official Senate allowances.

Ruling:

Rule 38 provides that a Senator may maintain an office account to defray expenses incurred in connection with his or her official duties, provided that such an account is composed only of any of four specific types of funds. These include the personal funds of the Senator and funds which have been received as reasonable reimbursements for expenses incurred by a Senator in connection with personal services provided by the Senator to the organization making the reimbursement.

The Committee believes that the establishment and maintenance of the described separate bank account, with its record-keeping potential, would be a satisfactory method of maintaining the type of office account which is authorized by Rule 38.

The Committee expresses no opinion as to the tax consequences, if any, of the maintenance of such a bank account.

INTERPRETATIVE RULING NO. 254

Date issued: May 7, 1979

Applicable Area: Advisory Opinion on Use of Letterhead

Question considered:

A Senator has proposed for the Committee's review several examples of letterheads on stationery and envelopes for use by non-Senate organizations in their mailings. None of the formats would use the Senator's official Senate stationery. Which, if any, of these proposed formats is consistent with the Ethics Committee's Advisory Opinion on the Use of Letterhead of August 14, 1978?

Format 1

(Name of Senator)

UNITED STATES SENATE
WASHINGTON, D.C.

Format 2

U.S. Senate

(NAME OF SENATOR)
WASHINGTON, D.C.

Format 3

SENATOR (NAME OF SENATOR)
WASHINGTON, D.C.

Format 4

(NAME OF SENATOR)
UNITED STATES SENATOR
WASHINGTON, D.C.

Format 5
United States Senator
(Senator's State)

(NAME OF SENATOR)
WASHINGTON, D.C.

Ruling:

The Committee believes that the use of formats one and two on letterhead to be used by non-Senate individuals and organizations in their mailings would be inconsistent with the Committee's Advisory Opinion of August 14, 1978, because both formats include the words "United States Senate."

INTERPRETATIVE RULING NO. 255

Date issued: May 10, 1979

Applicable Rules: 38 and 40

Question considered:

May a Senator accept without charge from a White House Conference on Small Business a computer list of 6,000 names and addresses of his or her business constituents for inclusion in the Senator's Senate computer file? The Conference's computer list is non-partisan in character and would be available to any Member of the Senate who desired to obtain it.

Ruling:

Senate Rule 38 prohibits the acceptance of goods and services by Senators in connection with official duties unless they are paid for with funds from one of the four sources listed in the Rule. However, the Committee has previously ruled [24] that in-kind services provided by agencies of the Federal government are not subject to the Rule 38 restrictions. The computerized mailing list provided by the White House Conference falls under this exception.

The Committee noted that under Rule 40, paragraph 5, the mailing list may only be incorporated into the Senate's computer facilities if the lists bear no identification of individuals as campaign workers or contributors, as members of a political party, or by any other political designation.

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[24] See Interpretative Rulings No. 196, dated October 26, 1978; No. 195, dated October 18, 1978 and No. 72, dated September 29, 1977.

INTERPRETATIVE RULING NO. 256

Date issued: May 14, 1979

Applicable Rule and Area: 34, the Ethics in Government Act of 1978

Question considered:

A reporting individual under Rule 34 (Title I of the Ethics in Government Act of 1978) purchased a cemetery lot for the interment of a granddaughter. Is this interest disclosable as an interest in real property?

Ruling:

Section 102(a)(3) of Title I of the Ethics in Government Act of 1978 requires disclosure of "the identity . . . of any interest in property held during the preceding calendar year in a trade or business, or for investment on the production of income."

The cemetery lot is not disclosable under the Ethics in Government Act because the facts indicate that it is not "property held . . . in a trade or business, or for investment or the production of income." The Committee decided that where a cemetery lot is held for the interment of a relative, as "relative" is defined in the Act (Section 102(2)) and the Rule (paragraph 7(j)), no public disclosure of the holding is required.

INTERPRETATIVE RULING NO. 257

Date issued: May 14, 1979

Applicable Rule: 37

Question considered:

May a former employee of a Senate committee resume employment with the same committee if he is in the process of putting together a business venture in the same field with which his committee work will be concerned? The individual is considered an expert in this particular field.

Ruling:

The Committee believes that if this individual were to be retained by his former committee, questions might be raised under Senate Rule 37, Conflict of Interest. Paragraph 5 of Rule 37 prohibits a Senate employee, compensated at a rate in excess of $25,000 per year and employed in excess of 90 days per year, from (a) affiliating with a firm, partnership, or association for the purpose of providing professional services for compensation; (b) permitting the use of the individual's name by such an entity; or (c) practicing a profession for compensation to any extent during regular Senate hours of the office in which the individual is employed. The legislative history of this provision makes clear that the prohibition was meant to include services performed as a consultant.

The Committee believes, however, that because the business venture is in the initial stages, paragraph 5 of Rule 37 would not bar such activities. At some later date, depending on the nature of the individual's activities in connection with the venture, application of this provision may operate to bar such activities.

Paragraphs 2 and 3 of Rule 37 are also pertinent. Paragraph 2 prohibits outside business activities which create a conflict of interest or the appearance of such a conflict; paragraph 3 requires an employee's supervising Senator to take such action as is necessary to avoid conflicts of interest.

The Committee believes that the proposed situation might raise the possibility of a conflict of interest because the individual's outside business activities and Senate duties appear to overlap in subject matter. However, the Committee has recognized in prior rulings that the Code places the initial responsibility for avoidance of conflict of interest on an employee's supervising Senator. A judgment as to whether a situation may create a conflict, or the appearance thereof, requires continuing attention to both the individual's Senate work assignments and outside activities, which this Committee is not in a position to provide.

INTERPRETATIVE RULING No. 258

Date issued: May 15, 1979

Applicable Rules and Area: 34, 35, and Ethics in Government Act

Question considered:

May a Senator accept an honorary country club membership as a result of being a Senator as well as accept gifts for taking part in a golf tournament?

Ruling:

Rule 35 of the Senate Code of Official Conduct defines the term "gift" to include "anything of value" (with certain exceptions). The Committee believes that, in ordinary circumstances, an honorary club membership and gifts given as a result of being a Senator and participating in a golf tournament would fall within Rule 35's definition of "gift".

Rule 35 prohibits Senators from accepting in any calendar year gifts with an aggregate value of over $100 from entities with a "direct interest in legislation before the Congress", as that phrase is defined in paragraph 1(b). If the donor of these gifts is not a "prohibited source" or the aggregate value of the gifts does not exceed $100, the gifts may be accepted.

If the value of the gifts is in excess of $100 ($250 for gifts of transportation, food, lodging, or entertainment), Senate Rule 34 requires that the gifts be disclosed along with the identity of the donor, and a brief description of and value of the gifts.

INTERPRETATIVE RULING NO. 260

Date issued: May 22, 1979

Applicable Rules: 37 and 41

Question considered:

What is the applicability of the Code of Official Conduct to the proposed establishment by a Senator of a field representative office in his or her home state, utilizing the office location and facilities of a law firm?

Ruling:

In this instance the Committee understands that the Senator proposes to hire a partner in a law firm at the annual salary of $21,546, to function as his or her personal representative in a five-county area. The lawyer would perform his duties—which would take approximately 30 hours a month—out of his law firm's offices and would continue to be a member of that firm and perform legal services for the firm's clients. In addition, some portion of the lawyer's Senate salary would be allocated by him to the law firm in return for the use of a portion of the firm's office space. Whatever secretarial assistance the lawyer would need would be provided by an employee of the law firm who would be compensated from Senate allowances. A separate telephone line would be established in the Senator's name within the lawyer's office at the law firm.

Both the lawyer and his secretarial assistant would be deemed employees of the Senate for purposes of the Official Code of Conduct since they would receive compensation for their Senate duties from the Secretary of the Senate. See Rule 41, paragraph 2.

Paragraph 5 of Rule 37 provides a specific prohibition on outside professional activities for those Senate employees who are compensated *at a rate in excess* of $25,000 per year. Although the lawyer in question would be paid only $21,546 a year, were he a full-time employee of the Senate his yearly salary would be considerably higher than $25,000.[25]

Because the application of paragraph 5 of Rule 37 is based on the receipt of compensation *at a rate in excess* of $25,000 per year, rather than on a gross amount in excess of $25,000, the Committee concluded that upon becoming a Senate employee, the lawyer would be subject to the prohibitions of this provision. This would mean that he would be prohibited from affiliating with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; permitting his name to be used by such a firm, partnership, association or corporation; or practicing a profession for compensation to any extent during regular office hours of the Senate office in which he is employed.

In addition, paragraphs two and three of Rule 37, which are applicable to all Senate employees irrespective of their level of compensation, might be applicable depending upon the clients which the lawyer represents and the exact nature of that representation.

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[25] This figure is based upon the hourly rate of an individual who receives $60/hr., who works 30 hours a month and who is compensated $21,546 a year. The executive branch agencies of the Federal Government compute yearly salary on the basis of 2,080 working hours a year and this figure is used in this instance because the Senate Disbursing Office bases its pay schedules on a set number of working days in a year (360) rather than the number of working hours in a year.

INTERPRETATIVE RULING NO. 261

Date issued: May 22, 1979

Applicable Rules and Area: 34, 35, Foreign Gifts and Decorations Act, and Mutual Educational and Cultural Exchange Act

Question considered:

May an employee of the Senate travel to a foreign nation at its expense for the purpose of participating in discussions with government officials of that nation concerning legislative matters of mutual interest?

Ruling:

Article I, Section 9, Clause 8 of the U.S. Constitution prohibits employees of the Federal Government, absent the consent of Congress, from accepting any gift, to include the expenses of foreign travel, from any foreign government. The Congress has consented to the acceptance of such gifts in two specific instances: the Mutual Educational and Cultural Exchange Act (22 U.S.C. 2451 *et seq.*) with respect to activities arranged by the State Department, and the Foreign Gifts and Decorations Act (5 U.S.C. 7342) which permits the acceptance of travel or the expenses thereof taking place entirely outside of the United States.

The Committee has been informed that this invitation is made under the aegis of a program which has been approved by the Department of State under section 108(A) of the Mutual Educational and Cultural Exchange Act.

The Committee has determined that participation in the program is in the interest of the Senate and the United States, and that its principal objective is educational, pursuant to paragraph 4(a) of Rule 35. Funds provided in connection with this program may not be accepted if not used for necessary food, lodging, transportation and related expenses (Rule 35(4)(c)).

Reimbursement of transportation, lodging, and food or entertainment aggregating $250 or more is reportable under the Ethics in Government Act of 1978.

INTERPRETATIVE RULING NO. 262

Date issued: June 12, 1979

Applicable Rule and Area: 34, Ethics in Government Act of 1978

Question considered:

If a Senator receives honoraria for speaking engagements, does this constitute a "sole proprietorship" required to be discussed under Title I of the Ethics in Government Act of 1978 (Senate Rule 34) as a "non-governmental position" held by the Senator?

Ruling:

The mere receipt of honoraria does not constitute a "sole proprietorship" for purposes of reporting under the Ethics in Government Act of 1978.

INTERPRETATIVE RULING NO. 263

Date issued: June 12, 1979

Applicable Rule: 41

Question considered:

May the press secretary of a Senator: (1) accompany the Senator on trips which are partly or wholly campaign-related (with such campaign expenses being defrayed by the Senator's principal campaign committee); (2) respond to press inquiries of a campaign-related nature; or (3) advise the Senator and the campaign staff of press-related political activities? The Committee was told that such activities would not result in a neglect of the press secretary's Senate duties.

Ruling:

This Committee has previously noted, in response to requests concerning the propriety of involving Senate staff in election campaigns, that the Committee on Rules and Administration was directed by the Senate to study this question and report proposals to prevent the misuse of official staff by holders of public office in Federal election campaigns. S. Res. 110, 95th Cong., 1st Sess., section 308 (1977). Pending completion of this study, this Committee has offered the following guidance.

Other than the restrictions on political fund activity in Senate Rule 41, no rule expressly prohibits campaign activity by staff during off-duty hours or during established and reasonable annual leave time. In addition, the Committee stated that Senate employees may engage in limited campaign-related activities during regular Senate hours, provided that the time involved is de minimus and such activity does not interfere with the employee's official Senate duties. However, if an employee intends to spend a substantial amount of time on campaign activities, the Committee has ruled that a Senator should use his or her best judgment in determining whether to remove the staff member from the Senate payroll or reduce his or her Senate salary commensurately.[26]

With respect to the specific questions posed, the Committee stated that the Senator must use his or her best judgment in determining whether it would be appropriate to remove the staff member from the Senate payroll or reduce his or her Senate salary.

The Committee recognized that the distinction between political activities which are official and those which are campaign-related is at times difficult to draw. The Committee was aware of no specific prohibitions which would bar a Senator's press secretary from responding to news media questions concerning the Senator's activities, including those of a political nature.

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[26] See Interpretative Ruling No. 59, dated September 13, 1977.

INTERPRETATIVE RULING NO. 264

Date issued: June 12, 1979

Applicable Area: Advisory Opinion on Use of Senate Letterhead

Question considered:

What is the applicability of the Senate Ethics Committee's August 14, 1978 Advisory Opinion to a letter from a Senator on Senate letterhead extending an invitation to support a United States team?

The Advisory Opinion states that:

> It is the opinion of the Select Committee that it is improper conduct which reflects upon the Senate for a Senator to authorize or allow a non-Senate individual, group or organization to use the words "United States Senate" and "Official Business", or any combination thereof, on any letterhead or envelope. The use by a Senator of his or her own name followed by the words "United States Senate" is not hereby deemed improper.

Ruling:

The Advisory Opinion seeks to prohibit a Senator from authorizing any non-Senate group to use the words "United States Senate", whether or not such words are followed by the designation "official business." The limitation on the use of the name of the institution by non-Senate groups was intended to preclude a mistaken impression by the recipient of a fund-raising letter that the letter was an official communication from the Senate.

The final sentence of the Advisory Opinion was intended to allow a Senator to use his letterhead, including the words "United States Senate", for his own personal purposes. That sentence, however, would not authorize a Senator to sign a single copy of a fund-solicitation appeal on his "United States Senate" letterhead for subsequent duplication and mailing by a non-Senate group.

The Committee was informed that the mailing in question was completely prepared and mailed by the Senator's office exclusively to Members of Congress, and that the United States team had no role in the preparation or mailing of the letter.

Based on this information, the Committee concluded that this mailing was of the type contemplated in the final sentence of the Advisory Opinion and therefore the mailing did not violate the Advisory Opinion.

INTERPRETATIVE RULING NO. 265

Date issued: June 12, 1979

Applicable Rule: 37

Question considered:

Would a conflict of interest be presented by the following prospective commercial transaction? A Senate employee has been asked by a contractor to sell a small tract of inherited land for the purpose of building Farmers Home Administration low-income rental housing. The employee does not intend to participate in either the construction or in any profits derived from the construction and will have no contact with the Farmers Home Administration. However, in the event the completed project is later syndicated for investment purposes, the employee would share in any profits resulting from the syndication.

Ruling:

This sale of real estate on the bare facts presented would not appear to raise questions of conflict. There are, however, details related to the post-sale arrangement which could raise questions of conflict of interest: for example, whether the individual assisted in obtaining the subsidy, and the circumstances of the purchaser's offer to the individual of a participation in the syndicate, particularly whether similar participations are to be offered on the same basis to other investors.

Senate Rule 37 imposes upon employees and their supervising Senators the responsibility for the avoidance of conflicts of interest. This Committee can call attention to relevant considerations, but absent facts which would indicate a real or apparent conflict, it is not in a position to substitute its judgment for that of the supervising Senator. The particular position held by an employee, and the exercise of the duties and responsibilities attendant to that position, are central considerations in determining the existence of a conflict of interest. The supervising Senator, rather than the Committee, must be the primary monitor of the propriety of the employee's outside activities. Senate Rule 37, paragraph 3, forbids outside business activity unless it is reported in writing to the supervising Senator so that he can take such action as deemed necessary to avoid a conflict of interest or interference with duties. The restrictions in paragraphs 1, 2, 4 and 5 of Rule 37 would also be pertinent in the event the sale and contemplated business arrangements were to be consummated.

INTERPRETATIVE RULING NO. 266

Date issued: June 13, 1979

Applicable Rule and Area: 34, Ethics in Government Act of 1978

Question considered:

Does the existence of an exploratory committee, established on behalf of an individual to determine the plausibility of his candidacy for the Senate, make him a "candidate" for the purpose of Rule 34 (Title I of the Ethics in Government Act of 1978)?

Ruling:

Provided that an individual has not taken the action necessary under law of the state in which he is running for nomination for election, or election, and the exploratory committee continues to receive contributions and make expenditures for the sole purpose of determining whether the individual should become a candidate for the Senate, it is not required that a Public Financial Disclosure Report be filed with the Secretary of the Senate. However, should the individual at a later date (1) decide to become a candidate for the Senate, (2) take any action necessary under the state law for nomination for election, or election to the Senate, or (3) the individual or the exploratory committee receives contributions or makes expenditures for purposes other than determining whether the person should become a candidate for the Senate, the individual would then be deemed to have been a "candidate", for the purposes of Senate Rule 34 (Title I of the Ethics in Government Act of 1978), as of the date his exploratory committee *first* received any contributions or made expenditures to "test the waters."

INTERPRETATIVE RULING NO. 267

Date issued: June 18, 1979

Applicable Rule and Area: 35, Franking

Question considered:

May a Senator accept a home-state food product (240 boxes—total value of $120) from a home state marketer in order to distribute it to every Senator and to various Washington newspaper food editors? The Senator will also include a cover letter of explanation with each sample.

Ruling:

The Report of the Special Committee on Official Conduct (Senate Report 95-49), in describing the provisions of Senate Rule 35 (then Rule 43), gifts, stated that . . .

> The Committee took notice of the historical practice followed in some offices of making home state products, of minimal value, available to constituents and others who visited the office. Such products are most often in the form of food and beverages, such as apples, peanuts, coffee and orange juice. Obviously, these products are provided by businesses back in the Senator's home state, and some of the individuals or organizations involved in providing them may fall within the definition of those with a "direct interest in legislation." Nevertheless, the Committee felt that this time-honored tradition did not involve any conflict of interest and provision of home state products, for this type of distribution, should not be regarded as a gift to the Senator or the office since it is passed on to those visiting the office.

The Committee concluded that the procedure outlined would be consistent with the practice noted in Senate Report 95-49 and therefore that the 240 boxes of food product would not be a gift to the Senator.

The Committee also noted that section 3215 of Title 39 of the United States Code, the franking statute, precludes the use of the mailing frank to distribute samples of the product to various newspaper food editors.

INTERPRETATIVE RULING NO. 268

Date issued: June 20, 1979

Applicable Rule: 37

Question considered:

May a Senator hold a position as unpaid chairman and member of the executive committee of a 501(c)(4) educational foundation which will seek public donations in order to disseminate information to the public concerning the Federal Government and other related matters? In addition, may a member of the Senator's staff serve without pay as president of the foundation? The actual management, direction and operation of the foundation would be accomplished by a staff to be paid from foundation funds, and no one affiliated with the Senate would engage in work of the foundation during working hours of the Senate.

Ruling:

The prohibition on service by a Senator or employee as an officer or member of the board of a publicly held or regulated organization excludes organizations exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, if the service is performed without compensation. (Senate Rule 37(6)). In a previous decision,[27] the Committee held that service of this nature is permitted unless it conflicts or interferes with the conscientious performance of Senate duties. It was noted, however, that the Committee has advised against an employee accepting a position with a tax-exempt organization where the activity of the organization was similar to that of the employee's committee assignment or area of responsibility. The study and dissemination of information concerning the free enterprise system is the centerpiece of the corporate purpose stated in the foundation's Articles of Incorporation. The Committee understands that the member of the Senator's staff who would serve as president serves on a Senate committee which has similar areas of responsibility. The Ethics Committee cannot predict whether this employee's foundation duties might at some time in the future come into conflict, or interfere, with his Senate committee duties. The Ethics Committee is unable to make a conflict of interest determination based on the information available. The responsibility to ensure that no conflicts arise rests with the individual Member and, in the case of an employee, also with the employee's supervising Senator.

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[27] See Interpretative Ruling No. 103, dated March 6, 1978.

INTERPRETATIVE RULING NO. 269

Date issued: June 26, 1979

Applicable Rules: 37 and 41[28]

Question considered:

What conflict of interest considerations pursuant to Senate Rule 37 may arise in the following situation?

A member of a Senator's staff will soon be removed from the Senate payroll in order to accept a position with the Senator's campaign staff. This individual has accrued vacation time in excess of 30 days. Office policy would allow a staff member to be carried on the payroll, after actual employment has ended, until the amount of unused vacation time is reached, but would not allow the individual to carry forward any such vacation time if she were re-employed by the Senator's office in the future. Therefore, the Senator has proposed that the individual be retained on the Senate payroll until her accrued vacation time has been exhausted and thereafter be entered on the Senator's campaign staff payroll. During this "vacation period," the individual will begin working on campaign related matters.

Ruling:

Paragraph 3 of Rule 37 on Conflict of Interest provides with respect to outside employment for compensation that a Senator upon learning of a staff member's proposed outside activities, take such action necessary to avoid any apparent or actual conflict of interest with a staff member's Senate duties. In addition, Senate Report 95-241 of the Committee on Rules and Administration states that it is not a violation of law nor any Senate rule for a member of a Senator's staff to work full-time in a political campaign while on annual leave or vacation time.

The Committee finds no difficulty under the Code of Official Conduct for the staff member to accept employment with the Senator's campaign committee under the terms outlined.

INTERPRETATIVE RULING NO. 270

Date issued: June 26, 1979

Applicable Area: Advisory Opinion on Use of Senate Letterhead, Franking

Question considered:

Does the Ethics Committee's August 14, 1978 Advisory Opinion on Use of Senate Letterhead prohibit a Senator from mass mailing a number of letters, using letterhead with his name followed by the words "United States Senator", on behalf of another person, organization or cause?

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[28] See Interpretative Rulings No. 3, dated May 5, 1977; No. 22, dated May 26, 1977; No. 32, dated June 17, 1977; No. 49, dated August 5, 1977; No. 59, dated September 13, 1977 and No. 88, dated November 16, 1977.

Ruling:

The Advisory Opinion prohibits a Senator from authorizing any non-Senate group to use the words "United States Senate", whether or not such words are followed by the designation "official business." The limitation on the use of the name of the institution by non-Senate groups was intended to preclude a mistaken impression, by the recipient of the fund-raising letter, that the letter was an official communication from the Senate.

The Advisory Opinion does not preclude a Senator from authorizing a non-Senate group to use letterhead which recites the Senator's name, followed by the words "United States Senator."

While the final sentence of the Advisory Opinion was intended to allow a Senator to use his letterhead, including the words "United States Senate", for his own personal purposes, that sentence would not authorize a Senator to sign a single copy of a fund-solicitation appeal on his "United States Senate" letterhead for subsequent duplication and mailing by a non-Senate group.

If the Senator were personally writing any number of individuals seeking funds on behalf of a particular cause or group, the Advisory Opinion would not preclude the use of his letterhead with the words "United States Senate."

In conclusion, 39 U.S.C. 3215, the franking statute, bars the use of a Senator's frank for any of these mailings, no matter who prepared and mailed the letters. That section states that a person who is entitled to use the frank may not lend it or permit its use by any committee or organization. In addition, 2 U.S.C. 439b prohibits the use of the frank in any mailing which solicits funds.

INTERPRETATIVE RULING NO. 271

Date issued: June 28, 1979

Applicable Area: Advisory Opinion on the Use of Senate Letterhead, Miscellaneous

Question considered:

May a Senator use stationery which identifies his party affiliation and position on Senate committees in connection with his campaign for re-election to the Senate? The stationery also includes an emblem which appears to represent the great seal of the United States.

Ruling:

The Committee concluded that it is not improper for a Senator to include his position and memberships upon committees of the Senate on stationery to be used in connection with an election campaign.

With respect to the emblem on the stationery, however, the Committee noted that 18 U.S.C. 713 prohibits the use of "any printed or other likeness of the great seal of the United States . . . or any facsimile thereof, . . . on any . . . stationery, for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship or approval by the Government of the United States. . . ."

INTERPRETATIVE RULING NO. 272

Date issued: June 29, 1979

Applicable Rules and Area: 34, 35, and Ethics in Government Act of 1978

Question considered:

What is the application of the Senate Code of Official Conduct to a proposed trip by Members of a Senate Committee and their spouses?

Facts:

The Committee plans to take a two-day trip to see certain operations in connection with the Committee's consideration of various legislative proposals. An Executive Branch department will provide the round-trip transportation. Local transportation costs necessary for the Senators to view on-site facilities will be provided by the local companies being inspected. The local Chamber of Commerce has invited the Senator's spouses to accompany the Senators and attend a reception and dinner. The Chamber has also offered to reimburse the Executive Branch department that is providing the Senators' transportation for the cost of round-trip air transportation for the Senators' spouses which would be $223 per person. The Chamber has also arranged for various individuals from the local business community to each take a Senator and spouse out to dinner on the second evening.

Ruling:

Rule 35, on Gifts, excludes from the definition of a "gift" the payment of the necessary expenses of travel, food, and lodging incurred in connection with an appearance by a Senator before the organization providing the expenses. The Rule also exempts meals, beverages, or entertainment which are consumed or enjoyed other than in connection with a gift of overnight lodging. (Rule 35, subparagraphs 2(a) and 2(a)(6)).

The Committee has previously ruled that fact-finding in connection with matters of direct interest to Members, their constituents, and private organizations is a service of public office, and accordingly acceptance of necessary expenses from sources with a direct interest in legislation before the Congress, as defined in Rule 35, would be permissible.[29]

The Committee has also recognized that the sponsor of an event may provide, under the "necessary expense" exception in Rule 35, hotel accommodations for a Senator and his spouse.[30]

Accordingly, the Select Committee believes that the scheduled trip by the Senate Committee Members and their spouses, as proposed, would not be in violation of Rule 35. The Committee notes that under Rule 34, travel-oriented reimbursements received by a Senator or a spouse from one source which aggregate $250 or more in a calendar year are publicly reportable.

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[29] See, Interpretative Ruling No. 69, dated September 27, 1977.

[30] See, Interpretative Ruling No. 124, dated May 5, 1978.

INTERPRETATIVE RULING No. 273

Date issued: July 9, 1979

Applicable Rules: 37 and 41

Question considered:

May a Senator hire an employee who also serves as a member of a state legislature of the State which the Senator represents? The employee would carry out normal staff functions but would not be one of the two staff members authorized by Rule 41 to engage in campaign fundraising activities. The state legislature meets for several months per year and its members are compensated at a rate of $200 a biennium, plus mileage.

Ruling:

Rule 37, paragraph 2, prohibits Senate employees from engaging in outside activity for compensation which is inconsistent or in conflict with official duties. Paragraph 3 of Rule 37 places the responsibility upon the employees' supervisor, which in this instance would be the Senator, to take such action considered necessary to avoid a conflict of interest or interference with Senate duties.

While the Committee cannot predict whether in fact this outside activity will conflict with Senate duties, or will result in conflict of interest in connection with a particular issue, the Committee suggests that, if hired, the employee be advised that the Senator will monitor the situation and consider whether a salary adjustment or restriction in Senate duties would be appropriate during those periods when the state legislature is in session. The Committee believes this approach to the matter would be in conformity with paragraph 3 of Rule 37.

INTERPRETATIVE RULING No. 275

Date issued: July 17, 1979

Applicable Rules: 34, 37, and 41

Question considered:

What is the applicability of the Senate Code of Official Conduct to a proposed employment arrangement whereby a Senator would hire a partner from a law firm located in his home State for a nine-month period, during which time the lawyer would be on leave from the firm but would receive a lump sum sabbatical payment? The law firm represents many leading corporations in the State and has clients which employ registered lobbyists or are themselves registered lobbyists. The staff member would be compensated by the Senate at a rate less than $25,000 per year.

Ruling:

The ruling request poses four questions for consideration. (1) Does the proposed arrangement create a conflict of interest problem as contemplated by Rule 37(a)? (2) Would the prohibition against affiliation with a firm in Rule 37(5) be applicable in this situation? (3) Would the individual be required to file a financial disclosure statement under Rule 34? (4) Would the post-employment lobbying prohibition of Rule 37(9) restrict the lobbying activities of the law firm?

1. Does the proposed arrangement create a conflict of interest problem under Rule 37(2)?

Rule 37(2) of the Senate Code of Official Conduct provides that:

> No Member, officer, or employee shall engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties.

The Nelson Committee Report, which accompanied Senate Resolution 110 (Senate Code of Official Conduct), noted that this provision "should be read to prohibit any outside activities which could represent a conflict of interest or the appearance of a conflict of interest." S. Rept. 49, 95th Cong., 1st Sess. 41 (1977). As the law firm represents many leading corporations in the Senator's State and in addition has clients who maintain registered lobbyists or are registered lobbyists themselves, the Committee is of the opinion that the proposed employment of a partner in the firm could result in an actual or apparent conflict of interest between the client's interests and the responsibility of the partner as a Senate employee.

The Committee noted that under paragraph 3 of Rule 37, it is the supervisor of a Senate employee who has the initial and continuing responsibility of determining whether a proposed situation creates a possible conflict. The supervisor is further responsible for monitoring the situation in order to determine what action, if any, may be "necessary for the avoidance of conflict of interest or interference with duties to the Senate."

2. Would the prohibition against affiliation with a firm provided in rule 37(5) be applicable to this situation?

Rule 37(5) states, in pertinent part, that: "No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall (a) affiliate with a firm . . . for the purpose of providing professional services for compensation; (b) permit that individual's name to be used by such a firm . . . or (c) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed."

The question is whether the sabbatical pay should be considered compensation for the performance of Senate services requiring, via Rule 41.4(c), that the payment be considered "compensation disbursed by the Secretary of the Senate", and therefore be aggregated with regular Senate salary for the purposes of the $25,000 threshold amount. The Committee concluded that if the law firm grants a paid leave of absence for work in a Senator's office, the pay would be deemed to be for services rendered to the Senate, and therefore, the sabbatical pay should be aggregated with regular Senate salary for purposes of determining whether the $25,000 threshold amount is met. If the amount is met, as it is apparent it would, then the partner would be required to terminate his association with the firm. If, however, the payment is earned or accrued pay, incident to an established sabbatical leave plan available to other members of the firm, the sabbatical payment without more, should not be regarded as compensation for Senate services and therefore would not be aggregated with regular Senate pay for purposes of meeting the $25,000 threshold amount and triggering the provisions of the Rule.

3. Would the individual be required to file a financial disclosure statement per the provisions of Rule 34?

Under Rule 34 (Title I of the Ethics in Government Act), Senate employees who are compensated at a rate equal to or in excess of basic pay in effect for GS–16 are required to file a financial disclosure report. The issue to be resolved here is identical to the one addressed under question 2. Consistent with the preceding discussion, the Committee concluded that if the sabbatical pay accrues incident to an established leave plan participated in by other members of the firm, sabbatical pay need not be aggregated with regular Senate salary to determine if the total compensation for Senate services meets or exceeds the threshold amount, thereby triggering Rule 37(5) and possibly, the reporting requirement.

4. Would the post-employment lobbying prohibition of Rule 37(9) restrict the lobbying activities of the law firm?

Rule 37(9) provides, in pertinent part, that: "If an employee on the staff of a Member, upon leaving that position, becomes a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or any successor statute, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, such employee may not lobby the Member for whom he worked or that Member's staff for a period of one year after leaving that position."

The Committee held that while the above provision would prevent the partner on sabbatical leave from lobbying for a period of one year after termination of Senate services, it would not restrict the lobbying activities,[31] of any other members, associates, or employees of the law firm.

INTERPRETATIVE RULING No. 276

Date issued: July 29, 1979

Applicable Rule: 37

Question considered:

May a Senator accept an honorarium from an organization with a direct interest in the action of a Senate committee on which the Senator sits?

Ruling:

While the receipt by a Senator of a speaking fee from an organization with a direct interest in the actions of a Senate committee the Senator sits on is not in violation of any specific provision of the Code of Official Conduct, it is possible that the receipt of many such fees may create the appearance of a conflict of interest. The Committee believes the Senator must use his or her best judgment as to whether he or she should accept the honorarium under these circumstances.

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[31] Prior interpretations of the lobbying prohibition in the Code can be found in interpretative Ruling No. 218.

INTERPRETATIVE RULING No. 277

Date issued: July 23, 1979

Applicable Rule: 40

Question considered:

Do trade journals and other periodicals published by the private business sector fall within the purview of the term "communications media" referred to in paragraph 4(c) of Rule 40?

Ruling:

Rule 40 of the Standing Rules of the Senate places certain restrictions on mass mailings sent out under the frank. As to such mailings:

1. they are not frankable within 60 days of an election in which the Member is a candidate.
2. funds, other than official Senate funds, cannot be used to prepare such a mailing.
3. they must be registered annually with the Secretary of the Senate.

The term "mass mailing" is defined in 39 U.S.C. 3210(a)(5)(D) as:

> "newsletters and similar mailings or more than 500 pieces in which the content of the matter mailed is substantially identical but shall not apply to mailings:
>
> > "(i) which are in direct response to inquiries or requests from the persons to whom the matter is mailed;
> >
> > "(ii) to colleagues in Congress or to Government officials (whether Federal, State, or local); or
> >
> > "(iii) of news release to the communications media."

In conformity with 39 U.S.C. 3210(a)(5)(D), paragraph 4(c) of Rule 40 excludes from the strictures of Rule 40 mass mailings which consist entirely of news releases to the communications media.

The Committee held that the "Communications media" does include publishers of periodicals such as trade journals and other periodicals published by the private business sector, and therefore the Rule 40 restrictions on mass mailings do not apply to news releases, to trade journals and other periodicals which are published by the private business sector.

INTERPRETATIVE RULING No. 278

Date issued: July 23, 1979

Applicable Area: Franking

Question considered:

It is permissible under the franking statute, 39 U.S.C. 3210 *et seq.*, for a Senator to use, in a franked mailing, the designations "D" or "R" representing Democrat or Republican, after the name of a United States Senator? In addition, is it permissible in a franked mailing to state that a legislative proposal was defeated "in a straight party-line vote?"

Ruling:

While the Committee believes that the designations "R" and "D", when used for purposes of party identification, and the pharse "in a straight party-line vote" may be used in a franked mailing, Section 3210(a)(5)(C) of Title 39 of the United States Code, prohibits the use of the frank for mail matter which specifically solicits political support for the sender or for any political party. *The Regulations Governing the Use of the Mailing Frank,* dated June 26, 1979, interprets this provision to preclude the inclusion of "material of a partisan nature" in newsletters or news releases mailed under the frank (Chapter Two, paragraph 4 of the revised Regulations). In this regard, the Committee noted that while the contemplated use of the phrase "in a straight party-line vote" is permissible, it might be prohibited as "material of a partisan nature" in different circumstances.

INTERPRETATIVE RULING NO. 279

Date issued: August 8, 1979

Applicable Rule: and 35

Question considered:

May a Senator accept an offer of a year's paid membership in an association which is a tax-exempt, non-profit institution which does not participate in lobbying or have other direct legislative interests under the meaning of Rule 35? The dues of $13.00 would be paid by a constituent.

Ruling:

Senate Rule 35 contains no prohibition on the acceptance of gifts from any source, if they are of an aggregate value of $100 or less in any calendar year. Moreover, gifts of a value less than $35 need not be aggregated. It is not necessary in these circumstances to consider the nature of the source, inasmuch as the gift ($13.00) is of an insufficient value to invoke the prohibitions.

INTERPRETATIVE RULING NO. 280

Date issued: September 10, 1979

Applicable Rule and Area: 40, Franking

Question considered:

May a Senator purchase a mailing list with funds from his or her official "ten percent" allowance? The purchase would be for full market value from a private group. After using the mailing list for official mass mailings, the Senator intends to inform the private group of any address changes or deletions from the list which become apparent as a result of returned mail. The Committee also understands that the private group might then offer the mailing list to the Senator's campaign committee as in "in-kind" contribution which would be reported as such.

Ruling:

The Senate Rules Committee, by letter of December 31, 1977, adopted an opinion by the Comptroller General of the U.S. that the role of the Rules Committee in approving vouchers for expenditures from the ten percent category is to ensure only that the vouchers are regular in form, have been certified by the Senator as being for official expenses not otherwise provided for in 2 U.S.C. 58(a), and are not for meals or entertainment. However, by letter of June 22, 1978, in resolving the question of whether non-Senate employee transportation expenses could be reimbursed from the ten percent allowance, the Rules Committee distinguished specific restrictive statutory provisions from the general application of the Comptroller General's advisory opinion.

The Rules Committee is the proper authority to be consulted concerning the propriety of use of the ten percent allowance in the absence of a Code of Conduct question. However, when specifically requested to rule on the permissibility of expenditures from the ten percent category with regard to the Senate's Code of Conduct, the Ethics Committee has undertaken to do so. In Interpretative Ruling No. 134, dated May 18, 1978, the Ethics Committee held that the ten percent discretionary fund could be used to purchase a mailing list of registered voters from a State election board when the list is uncoded as to political affiliation. The Ruling also noted that Senate Rule 40(5) imposed no restriction on the source of a mailing list which is to be processed by the Senate computer facilities.

The Committee's Interpretative Ruling No. 135, dated May 22, 1978, held that "a Senator may not use the mailing list of a private organization in a franked mailing and subsequently communicate information to that organization to enable it to update its mailing list." Reference was made to the franking statute, 39 U.S.C. 3215, wherein it is said a person entitled to use of the frank may not permit its use "for the benefit or use of any committee, organization, or association."

Although in this specific situation the full market value would be paid initially for the list, the value of the list, as corrected, would be enhanced as a result of the use of Federal funds (the cost of the frank) and this value would be donated to a private entity, whether the private group or the Senator's campaign committee. This proposed arrangement would be improper as a misuse of the frank and a misuse of Federal funds for political purposes. The authorization of the purchase of the list from the ten percent fund, absent the arrangement intended thereafter with the private group and the Senator's campaign committee, would be a matter for decision by the Rules Committee.

INTERPRETATIVE RULING NO. 281

Date issued: September 19, 1979

Applicable Rules: 34 and 35

Question considered:

May a group which has an interest in legislation pending before the Congress sponsor and defray the total cost of a dinner or other function at which a Senator is the guest of honor and will address those present? Furthermore, is the Senator required to report the cost of the function in his Senate financial disclosure report?

Ruling:

Senate Rule 35 on "Gifts" prohibits Members, staff, and their spouses from accepting gifts having an aggregate value exceeding $100 in a calendar year from individuals or entities having a direct interest in legislation before the Congress, as defined in Paragraph 1(b) of the Rule. However, Rule 35 expressly exempts from the definition of gifts subject to the prohibitions "a reception at which the Member, officer, or employee (of the Senate) is to be honored, provided such individual receives no other gifts that exceed the restrictions in the rule, other than a suitable memento," and "meals, beverages, or entertainment consumed or enjoyed, provided the meals, beverages, or entertainment are not consumed or enjoyed in connection with a gift of overnight lodging." As a result of these exceptions, a Member is not prohibited from accepting the food, beverages, or entertainment incident to a dinner or other function at which he or she is the guest of honor, regardless of whether the event is sponsored or paid for by a prohibited source of gifts under Rule 35.

As to disclosure, Title I of the Ethics in Government Act of 1978, specifically exempts from the definition of reportable gifts any "food and beverages consumed at banquets, receptions, or similar events." As a consequence, neither the food or beverages provided to all those who attend the dinner or similar event constitute a reportable gift. However, if there is payment of or provision for travel-related expenses of the Member by the sponsor of the event at which the Member is to appear, the cost of the travel-related expenses may be disclosable as a "reimbursement" on the Member's public financial disclosure report.

INTERPRETATIVE RULING NO. 282

Date issued: September 19, 1979

Applicable Area: Franking

Question considered:

May a Senator frank a card to top officials of Federal agencies providing services within the geographic area the Senator represents, in order to obtain information needed to enable his or her office to respond to emergency or constituent requests for assistance on the weekend? In addition, may the frank be used for the return of this information to the Senator's office?

Ruling:

Paragraph 4 of Chapter 1 of the *Regulations Governing the Use of the mailing Frank* provides that: "The sending back to a Senator, or officer of the Senate, of a return-addressed and franked piece of mail by an addressee does not constitute a loan of the frank if the mail matter was frankable and if the return use of the frank remains under the Senator's or officer's control."

The use of the frank for this purpose, in the conduct of official Senate business, thus would be permissible under the above provision so long as the mail matter to be returned to the Senate office is pre-addressed.

INTERPRETATIVE RULING NO. 283

Date issued: September 25, 1979

Applicable Rule: 37

Question considered:

May a Senator hire two lawyers to work part-time on matters arising out of the Senator's work on two committees? Both lawyers are in general practice and one of them is both a partner in a law firm and a member of a State legislature. Neither represents trade associations or clients in such a way as to be involved in lobbying efforts before the State legislature or the Congress of the United States.

Ruling:

Paragraph 5 of Rule 37 provides that no employee of the Senate compensated at a rate in excess of $25,000 may "affiliate with a firm . . . for the purpose of providing professional services for compensation." Since the lawyer, who is a partner in a law firm is to be paid less than the threshold rate, the prohibition does not apply.

Senate Rule 37 on Conflicts of Interest, in paragraph 2, prohibits a Member, officer, or employee of the Senate from engaging in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties. In the report to accompany S. Res. 110 (which established the Senate Code of Conduct), it was noted that this provision "should be read to prohibit any outside activities which could represent a conflict of interest or the appearance of a conflict of interest." (S. Rept. 49, 95th Cong., 1st Sess. p. 41 (1977)). The Committee has interpreted this paragraph to prohibit the type of situation where, for example, an individual's Senate duties involve work with a Committee that has jurisdiction over authorization, oversight, or legislation in connection with the proposed non-Senate activities.

In addition, paragraph 3 of Rule 37 states that no Senate employee may engage in any outside professional activity or employment for compensation unless he or she has reported in writing the nature of such activity to his or her Senate supervisor when such activity commences, and on each May 15th thereafter, so long as the activity continues. The supervisor is then required to make the initial determination as to whether a proposed situation creates a possible conflict of interest. The supervisor is further required to monitor the situation in order to determine whether action is "necessary for avoidance of conflict of interest or interference with duties to the Senate."

The Committee concluded that no real or potential conflict of interest problems were apparent from the facts of this situation but the Committee could not predict what might occur in the future. The Committee noted that it would be the continuing responsibility of both of these individuals and the Senate supervisor to take whatever steps necessary to avoid a conflict between their Senate duties and their non-Senate work.

INTERPRETATIVE RULING NO. 284

Date issued: October 2, 1979

Applicable Rule and Area: 34, Foreign Gifts and Decorations Act

Question considered:

What are the reporting requirements for a Senate staff member who intends to accept an invitation from an International Studies Center of an American university to participate in an educational study mission abroad?

Ruling:

A Senate staff member must file the annual public financial disclosure report required by Senate Rule 34 if he or she is a Senate employee for more than 60 days in a calendar year, is compensated for at least 60 days at an annual rate of pay equal to or in excess of the basic rate of pay in effect for grade GS–16 of the General Schedule, and is a Senate employee on May 15 of the succeeding calendar year. In addition, a staff person must file the financial disclosure report if he or she is designated by a Senator as a "principal assistant" for purposes of filing a report, or if he or she is designated to handle political funds pursuant to Senate Rule 41.

An individual who must file a public financial disclosure statement must disclose the source, a brief description, and the value of (1) any gifts of transportation, lodging, food and entertainment received from one source aggregating $250 or more in value, except that food, lodging or entertainment received as personal hospitality need not be reported, and any gift with a fair market value of $35 or less need not be aggregated; and (2) any other gifts received from one source aggregating $100 or more in value, except that any gift with a fair market value of $35 or less need not be aggregated.

In addition to the disclosure of gifts, a reporting individual must disclose the source and value of all "reimbursements" made to him or her by the Center at the university, if they aggregate $250 or more in value during the course of the calendar year. "'Reimbursement' means any payment *or other thing of value* received by the reporting individual, other than gifts, to cover travel-related expenses of such individual . . ." (2 U.S.C. 707(8).) (Emphasis added.) In order to distinguish a travel-related gift from a reimbursement, the following example is provided: If the Center at the American university is sponsoring a trip to Taiwan and the transportation is provided by the Center, the transportation is considered to be a "reimbursement." However, if the Center is sponsoring a trip to Taiwan and the transportation is provided by "X" organization, an entity separate from the Center, then the transportation is considered to be a "gift", unless either the employee or the American university reimburses "X" for the travel.

Furthermore, the Foreign Gifts and Decorations Act (5 U.S.C. 7342) limits the acceptance by any Member, officer, or employee of the Senate, and the spouse or dependent thereof, of certain tangible gifts and gifts of travel, or expenses for travel, from a foreign government. In addition, certain reporting requirements are imposed upon Members, officers and employees who accept gifts from a foreign government pursuant to the provisions of the Act.

INTERPRETATIVE RULING No. 286

Date issued: October 2, 1979

Applicable Rule: 37

Question considered:

May a committee legislative counsel accept a position on the editorial board of a state university publication which receives funds from an agency over which that committee has jurisdiction? The Senate employee would receive no compensation, except for reimbursement of travel and related expenses in connection with attendance at board meetings.

Ruling:

Rule 37(3), of the Senate Code of Official Conduct, Conflict of Interest notes that it is the supervisor of the Senate employee who has the initial and continuing responsibility for determining whether a proposed situation creates a conflict of interest. Paragraph 2 of Rule 37 states that no Member or employee of the Senate shall engage in any outside business or professional activity for compensation which is inconsistent or in conflict with the conscientious performance of official duties. The legislative history of this provision states that it "should be read to prohibit any outside activities which could represent a conflict of interest or the appearance of a conflict of interest." S. Rept. 49, 95th Cong., 1st Sess., page 41 (1977).

In addition, prior to the commencement of any outside business or professional activity, an employee is required to report in writing the nature of such activity to his or her supervising Senator, who is then required to "take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate." Rule 37, paragraph 2. While the requirement for written notice to the employee's supervisor strictly speaking applies only to outside activities for which compensation is received, the Committee believes it is desirable that Senators be informed of all proposed outside business activities and positions contemplated by their staff.

The Committee, while recognizing the difficulty of substituting its judgment for that of the supervising Senator, believes that if

the position were accepted on the editorial board an appearance of a conflict of interest might result due to the jurisdiction of the particular committee over legislation and appropriations affecting the publisher.

INTERPRETATIVE RULING NO. 287

Date issued: October 2, 1979

Applicable Area: Franking

Question considered:

May a Senator send, as franked mail, a reprint of a part of the *Congressional Record* containing an article complimentary to the Senator excerpted from a magazine?

Ruling:

Section 3212 of Title 39, United States Code, states that "Members of Congress may send, as franked mail, any part of, or a reprint of any part of, the *Congressional Record,* including speeches or reports contained therein, if such matter is mailable as franked mail under Section 3210 . . ."

Section 3210(a)(4) of that statute prohibits the use of the frank for "the transmission through the mails . . . of matter which in its nature is purely personal to the sender or to any other person and is unrelated to the official business, activities, and duties of the public officials (who are authorized to use the frank)." In addition, Section 3210(a)(5)(A) prohibits the use of the frank for "mail matter which constitutes or includes any article, account, sketch, narration, or other text laudatory and complimentary of any Member of, or Member-elect to, Congress on a purely personal or political basis rather than on the basis of performance of official duties as a Member or on the basis of activities as a Member-elect."

Although the *Regulations Governing the Use of the Mailing Frank* state that "the use, in a newsletter or other mass mailing, of matter which is laudatory or complimentary to the Senator, no matter how deserving the basis or how accurate a factual account, may give the impression that the Senator is advertising himself for political purposes contrary to section 3210(a)(5)(C) . . . ," they further state that "matter complimenting a Senator is frankable only if it relates to achievements related to the performance of Senate duties."

In this factual situation the excerpt appeared to be complimentary on the basis of the performance of official duties as a Member of the Senate, and the Committee concluded the *Congressional Record* excerpt could be mailed under the frank.

INTERPRETATIVE RULING NO. 288

Date issued: October 16, 1979

Applicable Rules: 37 and 41

Question considered:

May a member of a Senator's staff take two days of "personal leave" from the Senate in order to consult with a state political party in the development of on-going programs for the state political party? The consulting work will not pertain to any official business or any past, present or future work assignment in the office, nor will the work be carried out on the Senator's behalf, on behalf of any other elected official, or any candidate for public office. The consulting will not exceed two days in duration and payment will not exceed $200 plus expenses.

Ruling:

Paragraph 3 of Rule 37 on Conflict of Interest provides, with respect to outside employment for compensation, that the supervisor, upon learning of the proposed outside activities, is to take such action as may be necessary to avoid any apparent or actual conflict of interest with Senate duties. In addition, Senate Report 95-241 of the Committee on Rules and Administration states that it is not a violation of law or any Senate rule for a member of a Senator's staff to work full-time in a political campaign while on annual leave.

Senate Rule 41 prohibits Senate employees generally from receiving, soliciting, being the custodian of, or distributing funds in connection with any campaign for nomination or election to the Senate for any other federal office, unless such an individual has been designated by the Senator, pursuant to that Rule, to engage in political fund activity on behalf of the Senator. The Select Committee has previously ruled that the Rule 41 prohibition of political fund activity by other than designated staff applies to duty hours, off-duty hours and vacation leave.

The Committee concluded that on the basis of the facts given this employment is not prohibited by the Code of Official Conduct.

INTERPRETATIVE RULING NO. 289

Date issued: October 16, 1979

Applicable Rule and Area: 38, Federal Election Campaign Act

Question considered:

May excess campaign funds from a principal campaign committee be used to defray the cost of entertaining individuals or small groups of constituents at lunch or dinner, or to purchase furniture or other fixtures (such as desks, chairs, and curtains) for office use?

Ruling:

The use of excess campaign funds is governed by both the Federal Election Campaign Act and Senate Rule. 2 U.S.C. 439a permits such funds to be used for any lawful purpose, including the ordinary and necessary expenses incurred in connection with one's duties as a holder of federal office. In addition, Senate Rule 38 allows Senators to defray office expenses from "funds derived from a political committee"; however, no campaign contributions may be converted to the personal use of any Member. "Personal use", as that term is used in Rule 38, does not include reimbursement of "expenses incurred by a Member in connection with his official duties."

The Committee concluded that for the purposes of Rule 38, both the cost of entertaining constituents at lunch or dinner, and the cost of furniture or other fixtures for use in a Senate office, are the kinds of expenses which are incurred by a Member in connection with official duties. Consequently, excess campaign funds from a Senator's principal campaign committee may be used to pay these expenses, either directly or as reimbursements should the Senator pay the expenses from personal funds. However, in view of the Rule 38 prohibition on converting contributions to the personal use of any Member or former Member, furniture or other office fixtures should be returned to the Member's principal campaign committee after its use in the Member's office has been completed.

The Committee noted that this interpretation of paragraph 2 of Rule 38 had no bearing on the question of what kinds of expenses are "official expenses" as that term may be defined by the Senate Rules Committee or the Senate Disbursing Office for the purpose of making reimbursements to Members from Government funds.

INTERPRETATIVE RULING NO. 290

Date issued: October 26, 1979

Applicable Rule and Area: 40, Franking

Question considered:

May a Senator on a regular basis send to constituents questionnaires, news briefs, notices on upcoming legislation, and other items of a non-partisan, civic-oriented nature? The recipients are to be referred to as "precinct advisory liaisons" in the mailings in order to utilize the abbreviation "PAL". The purpose of the mailings is to establish a vehicle to obtain constituent response and recommendations from neighborhoods of the home State.

Ruling:

Section 3210(a)(1) of Title 39, U.S. Code, states: "It is the policy of the Congress that the privilege of sending mail as franked mail shall be established . . . in order to assist and expedite the conduct of the official business, activites, and duties of the Congress of the United States."

Section 3210(a)(3) of Title 2 states: "It is the intent of the Congress that such official business, activities, and duties . . . shall include, but not be limited to, the conveying of information to the public, and the requesting of the views of the public . . ."

Newsletters and questionnaires are specifically authorized for franking (Section 3210(a)(3) (B) and (C)) but both must be restricted to official business, duties, and activities. Material which is of a personal or partisan nature may not be mailed under the frank.

The Committee saw nothing inherently wrong with the proposal; however, it may be very difficult for many to see the separation drawn between those who will receive the franked mailings and political workers. It is the responsibility of the Member to see that the distinction is clearly maintained.

As to using the words "precinct advisory liaisons" to describe the recipients of matter mailed under the frank, the Committee noted that the term "precinct" is so closely associated with the electoral process that its use in a franked mailing could be construed as constituting prohibited or partisan matter and recommends caution in using the word "precinct" in matter mailed under the frank.

Finally, if the names and addresses are to be used in the Senate computer facilities, is such use permissible under Senate Rules? Rule 40.5 prohibits using Senate computer facilities "to store, maintain, or otherwise process any lists or categories of lists of names and addresses identifying the individuals included in such lists as campaign workers or contributors, as members of a political party, or by any other partisan political designation." If the mailing list is not used for partisan political purposes to any extent whatsoever, and the list or lists is not derived or acquired from lists selected on the basis of a high incidence of partisan behavior, then the use of the list would not violate Rule 40.

INTERPRETATIVE RULING NO. 291

Date issued: November 26, 1979

Applicable Rule: 41

Question considered:

May a person on a Senator's staff act as the chief executive officer of a State political committee of a national political party? The individual would not receive compensation and would perform his or her responsibilities during off-duty hours.

While the State political committee's principal purpose is not the raising of campaign funds, the committee is ultimately responsible under its by-laws for all the affairs of the party in the State, including the support of Federal candidates, and does raise funds to support its own activities.

Ruling:

No provision in the Senate Code of Official Conduct completely bars Senate employees from engaging in general campaign activities, but Rule 41 strictly limits political fund activity. The Rule prohibits an officer or employee of the Senate from receiving, soliciting, being the custodian of, or distributing funds in connection with any campaign for the nomination or election of any individual for any Federal office. The Rule provides an exception, however, which allows each Senator to designate as many as two employees who may, with the permission of the employing Senator, receive, solicit, be a custodian of, or distribute funds in connection with any campaign for nomination for election, or election, of any individual to any Federal office.

While the principal purpose of the State party committee is not raising campaign funds for Federal candidates, the Committee concluded an individual acting as chief executive officer of a State party committee would necessarily be responsible, as part of the party committee's normal course of business, for the acceptance, solicitation, retention, or expenditure of funds in connection with campaigns for Federal office. As a result, only an individual who is properly designated under Rule 41 should undertake the proposed political activity.

INTERPRETATIVE RULING NO. 292

Date issued: November 27, 1979

Applicable Rules: 34 and 41

Question considered:

May the requirement to file a Public Financial Disclosure statement be waived for a political fund designee whose appointment period will cover a period of only six weeks?

Ruling:

Rule 41, paragraph one, states, in relevant part, that an assistant may be designated to handle political funds only "if such assistant files a financial disclosure statement in the form provided under Rule 34 for each year during which he is designated under this rule". There is no period of time which one must be so designated before the obligation to file a disclosure statement, pursuant to Rule 41, arises. Further, the Committee has no authority to waive the disclosure requirement.

INTERPRETATIVE RULING NO. 293

Date issued: November 28, 1979

Applicable Rules: 34 and 35

Question considered:

May a staff member accept room and board from a foreign foundation while attending a conference in the United States sponsored by that same foundation?

Ruling:

Paragraph 1(a) of Rule 35, Gifts, prohibits employees of the Senate from accepting gifts with a value in excess of $100 in any calendar year from foreign nationals. However, the necessary expenses of travel, including transportation, food, lodging, and entertainment are specifically excepted from the definition of "gift" in paragraph 2(a) of the Rule when such "necessary expenses" are provided by a sponsor on whose behalf the employee is making an appearance. The description of the event indicates that the benefits to be furnished to the staff member will be necessary expenses of travel. Inasmuch as such expenses are exempted from the scope of

Rule 35(1), it is not necessary to determine whether the source of the expenses is a prohibited one, and acceptance of the invitation is therefore permissible.

Senate Rule 34 on Financial Disclosure requires a reporting individual to report the identity of the source and a brief description of any reimbursements aggregating $250 or more in value in a calendar year received from any source.

INTERPRETATIVE RULING NO. 294

Date issued: December 10, 1979

Applicable Area: Foreign Gifts and Decorations Act

Question considered:

May a staff member accept an invitation to travel within a foreign country at the expense of that foreign government, to represent a Senator at a dedication ceremony? The staff member will provide travel expenses to and from the country and the foreign government will provide transportation and related expenses within the foreign country.

Ruling:

The U.S. Constitution prohibits employees and officers of the United States from accepting gifts from foreign governments unless Congressional consent has been given. Such consent has been given in the Foreign Gifts and Decorations Act (5 U.S.C. section 7342) for gifts of travel or expenses of travel taking place entirely outside the United States if such acceptance is appropriate, consistent with the interests of the United States and permitted by the employing agency. The Committee finds that acceptance of travel benefits from the government under the circumstances described is appropriate and consistent with the interests of the United States, and is therefore permissible.

Within thirty days after any Member, officer, or employee of the Senate has accepted travel or expenses for travel taking place entirely outside the United States, where costs have been borne by a foreign government, such Member, officer, or employee must file a statement of information with the Select Committee. The Committee's annual "Dear Colleague" letter sets forth the items to be included in filing that statement.

Tangible gifts from a foreign government of more than "minimal value" are deemed to have been accepted on behalf of the United States and become the property of the United States. Within 60 days after acceptance of any such gift, it must be deposited with the Secretary of the Senate with a statement of details.

INTERPRETATIVE RULING NO. 296

Date issued: December 18, 1979

Applicable Area: Franking

Question considered:

May the frank be used by a Senator to send letters of congratulations to soldiers from his or her home State who enlist or re-enlist in the U.S. Army? The Army would provide the names and addresses of soldiers and the Senator's staff would prepare the letters and would use official stationery and franked envelopes for the mailings.

Ruling:

Section 3210(a)(3)(F) of Title 2 of the United States Code authorizes franking of "mail matter expressing . . . congratulations to a person who has achieved some . . . public distinction."

The Committee has concluded that enlisting or re-enlisting in the Armed Forces of the United States is an act which constitutes a "public distinction" contemplated by the authorization for franked mail matter in section 3210(a)(3)(F) of Title 2. The Committee, therefore, concludes that letters expressing congratulations to individuals who enlist or re-enlist in the Armed Forces are frankable.

INTERPRETATIVE RULING NO. 297

Date issued: December 18, 1979

Applicable Rule: 37

Question considered:

May a member of a Senator's personal staff serve as an officer or board member of a 501(c)(4) educational foundation, and in addition, be paid a fee by the foundation for consultant services? No work for the foundation would be performed by the employee during working hours of the Senate. Expertise involved in consulting would be unrelated to the employee's professional responsibilities to the Senate, and any consulting time devoted to the foundation would not conflict with the performance of Senate duties.

Ruling:

Rule 37(6) prohibits service by a Senator or employee as an officer or member of the board of a publicly held or regulated organization, excluding, however, organizations exempt from taxation under 501(c) of the Internal Revenue Code of 1954 if the service is performed without compensation. A prior ruling of the Committee[32] held that service of this nature for a 501(c) organization is permissible unless it conflicts or interferes with the conscientious performance of Senate duties.

The 501(c) exclusion in Rule 37(6) extends to employees on the personal staff of a Senator as well as those on a Committee staff.

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[32] See Interpretative Ruling No. 103.

Inasmuch as the exclusion applies only if one receives no compensation for service as an officer or director of a 501(c) organization, a determination of whether it would be permissible for an uncompensated officer or director to serve at the same time as a paid consultant for the same 501(c) organization would turn on whether the consulting duties are related to the responsibilities of the position of officer or director. Since neither the rule nor its legislative history give any indication that service as a paid consultant for a 501(c) organization is impermissible, the Committee held that if the duties as a consultant are unrelated to the responsibilities of officer or director, and if the consulting duties are not violative of paragraphs 1, 2, 3, and 6 of Rule 37, service as a paid consultant while also serving as an officer or director would not be prohibited. If the consulting duties are not clearly distinguishable from the responsibilities of the position of officer or director, approval of dual service in two such capacities could encourage by indirection the accomplishment of that which is directly prohibited.

The Committee recognized that where consulting duties have an uncertain relationship to responsibilities as an officer or director, it would be more difficult to determine whether the arrangement violates the spirit of the Rule 37 paragraph 6(a) exclusion in the case of an officer charged with day to day responsibility for conducting the business of the organization than in the case of a director whose responsibilities are necessarily confined to policy matters.

Under paragraph 3 of Rule 37, it is the continuing responsibility of an employee's supervisor to monitor situations such as this to avoid any conflict of interest or interference with Senate duties. The Committee noted that it could not monitor the manifold aspects of the relationships which might arise in the future in a consulting role, and could only offer guidance.

INTERPRETATIVE RULING NO. 298

Date issued: December 18, 1979

Applicable Area: Franking

Question considered:

May a Senator send a newspaper column under his frank in response to letters he has received from constituents concerning the Department of Education?

Ruling:

The Committee held that the proposed mailing constituted frankable mail matter within the meaning of Section 3210 of Title 39 of the United States Code, and the regulations promulgated thereunder, because the column concerned the approval by the Congress of legislation creating the Department of Education and the Committee noted that section 3210(a)(3)(A) of the franked mail statute specifically authorizes the franking of mail matter "regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress".

INTERPRETATIVE RULING NO. 299

Date issued: December 20, 1979

Applicable Rules: 34 and 35

Question considered:

May a Senator accept travel expenses to a foreign country from private educational and cultural organizations which use grant funds derived from a "Friendship Commission" to pay for the travel expenses? The "Friendship Commission" was established by a United States Public Law, which provides that the Commission shall use funds derived from payments by the foreign country to the United States Government to support educational and cultural activities that will enhance friendship, understanding, and mutuality of interests between the two nations. The Commission provides grant funds to private, non-profit organizations in both countries which conduct exchanges between the two countries for educational purposes. The Commission itself does not directly operate any programs.

Ruling:

The Committee has previously ruled (see Interpretative Ruling No. 105, dated March 9, 1978) that a Member, officer, or employee of the Senate may accept the necessary expenses of foreign travel in connection with an appearance incidental to official duties where the travel expenses are furnished or paid for by a domestic American sponsor of the program. From the facts outlined a Member may accept the necessary expenses of a trip to the foreign nation from a private domestic organization which derives its funds from the Commission. A Member who accepts these necessary expenses of travel will be obligated by Title I of the Ethics in Government Act of 1978, which has been adopted by the Senate as Standing Rule 34, to disclose the receipt and source of these travel-related expenses on his or her annual public financial disclosure report, where total expenses equal or exceed $250. Since the Commission itself does not directly operate any programs, the source of the expenses should be identified as the domestic organization which received Commission funds and which in turn provided the Member's expenses.

Where the organization which proposes to provide travel expenses is a foreign organization, *Rule 35 of the Standing Rules of the Senate prohibits a Member of the Senate from accepting payment for travel expenses from a foreign organization unless the provisions of paragraph 4 of the Rule are met.* Paragraph 4 provides that travel expenses may be accepted from a foreign organization where the purpose of the trip is educational, participation is not in violation of any law, the Select Committee on Ethics determines that participation in the program is in the interests of the Senate and the United States, and proper notice is published in the *Congressional Record.* Where these travel expenses are received they must also be disclosed on a Member's annual public financial disclosure report when the expenses equal or exceed $250.

INTERPRETATIVE RULING NO. 300

Date issued: February 6, 1980

Applicable Rules and Areas: 35, 38, Federal Regulation Lobbying Act of 1946, and Federal Election Campaign Act of 1971

Question considered:

A Senator who was in his home state was asked to testify in Washington before a Federal Commission in support of a request for relief of thirteen domestic companies. Round-trip commercial air transportation between the home state and Washington was not obtainable at that particular time. Is it permissible to accept round-trip transportation on a plane owned by one of the companies involved in the matter before the Commission? The company maintains a political committee and a registered lobbyist.

Ruling:

Rule 35 of the Senate Code of Official Conduct imposes a $100 limitation on gifts to Senators from entities with a "direct interest in legislation before the Congress", defined as organizations which have a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or a separate segregated fund for political purposes under the Federal Election Campaign Act of 1971, as amended.

Based on the information provided, the Committee believes that the providing of transportation by the company, in the circumstances described, would constitute a "gift" worth more than $100 from an organization with a "direct interest in legislation before the Congress," and would thus be prohibited under Rule 35; it would not fall within the exception to the definition of "gift" for the necessary expenses of travel because the Senator is not making an appearance before the company providing the transportation, and would not fall within the "consideration" exception because testifying before the Commission does not constitute performing services for the company. Accordingly, reimbursement, based on commercial airfare rates, should be made to the company for the value of the transportation exceeding $100.

The Committee notes that if the appearance before the Commission was in connection with official duties, it would seem that a request for reimbursement from official funds would not be improper. Alternatively, under Senate Rule 38 it would be permissible for a Senator's political committee to provide reimbursement for expenses in connection with the appearance.

INTERPRETATIVE RULING NO. 301

Date issued: February 21, 1980

Applicable Rule and Area: 41, Federal Election Campaign Act Amendments of 1979

Question considered:

May a Senate employee who is not designated under Senate Rule 41, contribute money to incumbent and non-incumbent presidential and congressional candidates, to National, State, and local political party committees, or to State and local candidates or their campaign committees? In addition, which of the above actions would not be permissible for the political fund designee under Rule 41?

Ruling:

These questions involve application of a Federal statute, amended by the Federal Election Campaign Act Amendments of 1979, which prohibits the making of certain political contributions by Federal employees. The amended provision, now found in Section 603 of Title 18 of the United States Code, reads as follows:

"Section 603. Making Political Contributions.

(a) It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, employee or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e)(1) of the Federal Election Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee."

The interpretation of the new provision, and the enforcement of its prohibition, are within the jurisdiction of the United States Department of Justice. The Committee noted, however, that during Senate consideration of H.R. 5010, a bill to amend the Federal Election Campaign Act of 1971 (which became P.L. 96-187), Senator Hatfield, a member of the Senate Rules Committee, referred to the proposed changes in the criminal code, stating: "Current provisions of the Criminal Code reflect a long-standing concern that no Federal employee be subject to any form of 'political assessment'. Consistent with this underlying concern, the revised language permits a Federal employee to make a voluntary contribution to another Federal employee who is not his or her employer or employing authority." 125 Cong. Rec. S19099 (December 18, 1979).[33]

The Senate has previously recognized that questions might be raised under existing statutory prohibitions in the Federal criminal code on the solicitation, receipt, and making of political contributions (formerly found in 18 U.S.C. sections 602, 603, and 607). When the Senate adopted its Code of Official Conduct for Members and employees of the Senate on April 1, 1977, it instructed the Senate Rules and Administration Committee to "study laws relating to contributions solicited from or made by officers or employees of the Senate and report the results of their review, together with their recommendations, to the Senate within one hundred and eighty days . . ." Section 307, S. Res. 110, 95th Cong., 1st Sess. (1977). Pursuant to this mandate, the Rules Committee issued a report on October 17, 1977 (S. Rept. No. 95–500, 95th Cong., 1st Sess.), which contained the first phase of their study, a compilation of existing laws relating to this issue.

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[33] The Committee also noted that the prohibition in the criminal code on receipt of contributions in a Federal building (formerly 18 U.S.C. section 603) was also amended by the Federal Election Campaign Act Amendments of 1979 to allow unsolicited contributions to be received in a Federal building, provided they are not directed to be sent there, and further provided that they are transferred to a political committee within 7 days of receipt. 18 U.S.C. section 607, as amended.

In addition to the statutory provision discussed above, Rule 41 of the Senate Code of Official Conduct contains restrictions on one aspect of campaign activity—the handling of campaign funds by Senate staff. The Rule states that no employee of the Senate may receive, solicit, be the custodian of, or distribute any funds in connection with any campaign for Federal office, unless the employee is one of two individuals specifically designated by his or her Senator to engage in limited political fund activity on the Senator's behalf.[34]

INTERPRETATIVE RULING NO. 302

Date issued: February 21, 1980

Applicable Rule: 41

Question considered:

May an employee on the personal staff of a Senator, with the approval and monitoring of the Senator, engage in substantial political activity for a limited period of time on behalf of a presidential candidate? The staff member will devote at least fifteen percent of his time to his Senate duties; however, he will receive a proportional salary reduction and will not engage in political activity from either the Senator's Washington or state office.

Ruling:

It is a Member's prerogative in staffing his or her office to prescribe an employee's duties and hours, and to consent to certain outside activities.

Other than the restrictions on political fund activity in Senate Rule 41, no rule expressly prohibits political activity by staff during off-duty hours or during established and reasonable annual leave time. However, if an employee intends to spend a substantial amount of time on campaign activities, the Committee has ruled that a Senator should use his or her best judgment in determining whether to remove the staff member from the Senate payroll or reduce his or her Senate salary commensurately.[35]

With respect to the proportional salary reduction, the Committee concluded that the proposal is reasonable. In addition, the Committee noted that the employing Member will monitor operation of the plan to ensure that it is carried out as represented. Finally, the Committee noted that the staff member will continue to be subject to the Senate Code of Official Conduct during this period of outside employment for compensation.

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[34] See, Interpretative Rulings Nos. 3, 5, 22, 49, 153, 182.

[35] See, Interpretative Ruling No. 59.

INTERPRETATIVE RULING NO. 303

Date issued: February 21, 1980

Applicable Area: Franking

Question considered:

Is it permissible under the franking statute for a Senator to distribute return-addressed, franked envelopes to selected individuals in his State, who would use the envelopes to mail copies of local newspapers to his Washington office in an effort to keep the Senator informed of the local news as it relates to the Federal Government?

Ruling:

The Committee does not believe that this proposed use of franked envelopes is proper under the franked mail statute, 39 U.S.C. 3210 *et. seq.* The statute, at section 3215, prohibits a person who is entitled to use the frank from lending it or permitting its use by any individual or group who is not authorized to use the frank. In addition, *The Regulations Governing the Use of the Mailing Frank* state: "Under this section a Member or official authorized to frank mail matter may not allow his or her frank to be used in any way that would inure to the benefit of persons, firms, or organizations themselves not authorized to send mail matter under the frank."

The Committee has consistently taken the position (see *e.g.*, Interpretative Ruling No. 127, dated May 12, 1978) that because of the opportunity for alteration of the matter mailed or misuse of the frank, franked envelopes may not be processed, mailed, or distributed by any outside individual or organization. The Committee has recognized a narrow exception where franked envelopes are labeled or stuffed by outside groups under the personal supervision of an employee from the Senator's office. This exception is based on the Committee's recognition that, pursuant to the statute, the use of the mailing frank is the personal responsibility of the Senator entitled to its use and that prior to delivery to the Postal Service, franked envelopes must not leave his custody or control.

INTERPRETATIVE RULING NO. 304

Date issued: February 21, 1980

Applicable Rule: 37

Question considered:

May an attorney employed by a Senate Committee at a salary rate in excess of $25,000 argue a case before the appellate court while on leave from the Committee? The attorney tried the case, which is a suit for money damages, before the United States District Court prior to his employment with the Senate. Any subsequent work has been performed in his spare time.[36]

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[36] See Interpretative Rulings No. 70 and No. 233.

Ruling:

Rule 37 of the Senate Code of Official Conduct places the initial responsibility upon a Senate employee and his or her supervising Senator to determine whether any proposed outside business or professional activity would create a conflict of interest, or the appearance thereof. See Rule 37, paragraph 2. Under paragraph 3 of Rule 37, an employee must, before commencing any outside business or professional activity for compensation, report in writing the nature of such activity to his supervisor who is then required to "take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate." The employee must continue to file such reports on May 15th of each year thereafter so long as the outside employment continues.

In addition, paragraph 5 of Rule 37 prohibits a Senate employee who is compensated at a rate in excess of $25,000 per year and employed for more than 90 days in a calendar year from (a) affiliating with a firm or partnership, (b) permitting his name to be used by such firm or partnership, or (c) practicing a profession "to any extent during regular office hours of the Senate office in which employed." This Committee has previously ruled that this last provision restricts, but also contemplates some limited practice of a profession outside office hours or on annual leave time, as a sole practitioner.

Thus, it would appear that the proposed handling of the matter, if approved by the supervisor, would be permissible.

INTERPRETATIVE RULING NO. 305

Date issued: February 21, 1980

Applicable Rules: 34, 35, and 37

Question considered:

A commerce and industry association invited a Senate staff member to participate in a six-day program in order to acquaint him with the business operations of the association's members. The program would take place during a Senate recess period. May the staff member accept necessary travel, food, and lodging expenses in connection with participation in the program?

Ruling:

Rule 35 of the Senate Code of Official Conduct prohibits the acceptance of gifts, including gifts of travel, from certain sources. However, the definition of "gift" under Rule 35 does not include the payment by a sponsoring organization of travel, food, and lodging expenses incurred by a Senator or a member of his staff in connection with the performance of a service by the Senator or his aide on behalf of the sponsoring organization.

The Committee has previously ruled that "fact finding" in connection with matters of direct interest to a Senator, his constituents, and the sponsoring organization is a service of public office, and that the payment by the sponsoring organization of the necessary expenses of a Senator or his aide incident to such a trip is permitted by Rule 35.

Therefore, payment by the association of the necessary travel, food, and lodging expenses incurred in connection with participation in such a program is permissible under Rule 35.

Under State Rule 34, the acceptance of necessary travel and related expenses would be reportable as "reimbursements" if the staff member is required to file a disclosure statement under the rule.

While the form of the proposed arrangement does not violate any specific prohibition of Rule 37, on conflict of interest, paragraph three of that rule directs that a supervisor, when an employee's outside business or professional activity or employment is brought to his attention, shall take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate.

INTERPRETATIVE RULING NO. 306

Date issued: March 3, 1980

Applicable Area: Franking

Question considered:

May a Senator's office use the frank to respond to a constituent's request for information concerning campaigns for the presidential nominations? The proposed response would inform the constituent that the request has been forwarded to the appropriate campaign committee for a reply.

Ruling:

While it is the prerogative of a Senator to respond or not to respond to the inquiries of his or her constituents, the franked mail statute, 39 U.S.C. 3210(a)(5)(c) prohibits the use of the frank for "mail matter which specifically solicits political support for the sender or any other person or any political party, or a vote or financial assistance for any candidate for any public office." The committee ruled that it did not believe that the proposed response would be prohibited by this section of the statute because there is no solicitation of political support and because the proposed letter merely informs the constituent that the request has been forwarded for a reply from a particular campaign committee.

INTERPRETATIVE RULING NO. 308

Date issued: March 3, 1980

Applicable Rule: 37

Question considered:

May a Senator's Field Representative serve on the boards of two non-profit organizations? The Senator is a member of two Committees which have oversight of Federal agencies providing funds to these organizations. The staffer will not participate in deliberations during board meetings regarding these funds and has no financial interest in their disposition, but the organizations' applications for such funds are handled through the Senator's office, which he supervises.

Ruling:

Rule 37 of the Senate Code of Official Conduct, Conflict of Interest, places upon Senate employees and their supervising Senators the initial, and continuing, responsibility for avoiding situations which create conflicts of interest, or the appearance of such conflicts. Paragraph 2 of Rule 37 states that no Member or employee of the Senate shall engage in any outside business or professional activity for compensation which is inconsistent or in conflict with the conscientious performance of official duties. The legislative history of this provision states that it "should be read to prohibit any outside activities which could represent a conflict of interest or the appearance of a conflict of interest."[37]

In addition, prior to the commencement of any outside business or professional activity, an employee is required to report in writing the nature of such activity to his or her supervising Senator, who is then required to "take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate." Rule 37, paragraph 3. While the requirement for written notice to the employee's supervisor literally applies only to outside activities for which compensation is received, the Committee believes it is desirable that Senators be informed of all proposed outside activities and positions contemplated by their staff.

In this specific case, since the organizations' applications for federal funds from agencies subject to oversight jurisdiction by two Senate committees on which the Senator serves are handled through the office which the Field Representative supervises, the Committee concluded there may be an appearance of a conflict of interest between the Field Representative's official responsibilities and his fiduciary duties to the boards of the two organizations. Further, if the Field Representatives were involved directly or indirectly in assisting or handling any application for funds, an actual conflict of interest might be presented.

The Committee has recognized, in prior rulings involving a conflict of interest question, the difficulty of substituting its judgment for that of the supervising Senator. The Committee can call attention to relevant considerations, but absent facts which would indicate an actual conflict, the committee concluded that the supervising Senator must be the primary monitor of the propriety of outside activities of his staff.

INTERPRETATIVE RULING NO. 309

Date issued: March 5, 1980

Applicable Area: Franking

Question considered:

The Congressional delegations of a State often work together on various State problems. These joint efforts are handled by a special

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[37] S. Rept. 49, 95th Cong., 1st Sess. (1977).

State team which plans to mail correspondence using a common letterhead approved by the Committee on Rules and Administration. Does the franking statute permit the use of the frank to mail correspondence to constituents and Government agencies on the common letterhead from each of the originating State Congressional offices?

Ruling:

Assuming that the content of the correspondence is frankable, as is set forth in the franked mail statute, 39 U.S.C. 3210 *et seq.*, and assuming that each of the delegation's offices maintains custody and control over the envelopes which bear its Senator's frank, per section 3215 of the statute, and provided that each office assumes the responsibility for the proper use of its own franked envelopes, the Committee concluded that the use of the mailing frank to mail correspondence on the "team" letterhead would be proper.

INTERPRETATIVE RULING NO. 310

Date issued: March 5, 1980

Applicable Rule: 40

Question considered:

For purposes of Rule 40 (1) and (6)(a), is a Member considered a candidate when he is the only individual in his party to file for election, his home State Board of Elections has declared him to be his party's candidate for U.S. Senator, and his name will not appear on the primary ballot?

Ruling:

Rule 40 declares that the frank may not be used for any mass mailings and the Senate and House radio and television studios may not be used, within the 60-day period immediately preceding the date of any primary or general election in which the Senator is a candidate for public office.

The Committee has interpreted Rule 40(1) and (b)(2) to be inapplicable to a Senator for the 60 days preceding a State primary in which the Senator's name does not appear on the primary ballot because of his nomination as the party's candidate at a party convention prior to the date of the primary, and has also held that Rule 40 is inapplicable to a Senator for the 60 days preceding a primary in which the Senator's name appears unopposed on the ballot and write-in votes are impermissible under State law.[38] Since the intention of the Rule is to reduce an incumbent's advantage over challengers, the Committee has found no basis for the constraint where the incumbent cannot be opposed by virtue of State law.

For these reasons, the Committee ruled that the 60 day limitations in Rule 40(1) and (6)(a) do not apply to the circumstances presented.

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[38] See Interpretative Rulings Nos. 137 and 152.

INTERPRETATIVE RULING NO. 311

Date issued: March 17, 1980

Applicable Rule and Area: 34, Ethics in Government Act of 1978

Question considered:

What are the public disclosure obligations of a reporting individual concerning an estate of which his spouse is a beneficiary? The executor has informed the spouse that a substantial and unspecified amount of the estate's non-cash assets will have to be sold prior to distribution of the estate in order to pay specific bequests, taxes, and other expenses, and that the executor expects that the estate will remain under administration for some months before distribution.

Ruling:

The Committee concluded that a reporting individual is not obligated under Title I of the Ethics in Government Act of 1978 (2 U.S.C. 701 et seq.) to itemize and value property held by an estate or its liabilities, or transactions by the administrator, and prior to a distribution of estate assets. The Committee held, however, that where a reporting individual is aware that he or she, or a spouse or dependent child, is the beneficiary of an estate from which reportable property may be received in the future, a very brief and general statement of interest should be provided. From the facts provided, a notation such as the following would be sufficient on the disclosure report: "Residuary legatee of the estate of *(name);* deceased *(month and year);* in period of administration; details of assets to be disclosed upon distribution (or when available, if there is a residuary trust)."

The Committee notes, however, that if reportable property is distributed or if a residuary trust is created, the holding of such property would have to be disclosed in the public financial disclosure report for the year in which the trust is created.

INTERPRETATIVE RULING NO. 312

Date issued: March 20, 1980

Applicable Rule: 37

Question considered:

May a staff member accept an uncompensated position on a State Commission? His supervising Senator is a Member of a Subcommittee whose jurisdiction includes providing funding for an Agency related to the work of the particular Commission. The staff member, however, has no duties or responsibilities with respect to the Subcommittee and he will not discuss or vote on any Commission proposal which might involve action by the Senate Subcommittee.

Ruling:

The Committee noted that questions may arise whenever an employee of the Senate is invited to accept an appointment to a State

Commission or is approached to serve on the board of directors of a private group and the Commission or the private group receives some or all of its funding from the Federal government. While there is no specific prohibition in Senate rules which would preclude the acceptance of such an appointment, paragraph 3 of Rule 37, Conflict of Interest, does direct that a Senate employee notify his or her supervisor at such time as he or she engages in an outside professional activity, on each May 15 thereafter and that upon notification it becomes the responsibility of the supervisor to make the initial judgment that an outside activity presents no actual or apparent conflict of interest either with respect to the time required to engage in the activity or due to the nature of the activity itself. In addition, the supervisor has an ongoing responsibility to monitor the outside activity and to take such action as he may consider necessary to avoid an actual or apparent conflict in the future. Based upon the facts presented, the Committee held that the proposed activity did not present an actual conflict of interest.

INTERPRETATIVE RULING NO. 313

Date issued: March 20, 1980

Applicable Rule: 40

Question considered:

Is Rule 40, paragraph 1, which provides a 60-day moratorium upon the use of the frank for any mass mailings prior to any primary or general election (whether regular, special or runoff), triggered by a Senator's participation in presidential primaries in States other than the Senator's home state?

Ruling:

The Committee held that Rule 40 was intended to be applicable to primary and general elections for the Senate in a Member's home state, as well as to a presidential primary or general election, in a Senator's home state where the Senator is a candidate in such a presidential primary or general election, but that the moratorium upon mass mailings to home state constituents is not triggered by participation in a presidential primary or the equivalent in another state. However, the Committee noted that the 60-day moratorium would also apply to any "mass mailing" mailed under a Senator's franking privilege to a state in which the Senator participated in a presidential primary or general election.

INTERPRETATIVE RULING NO. 314

Date issued: March 25, 1980

Applicable Rules: 35, 37, and 41

Question considered:

May a Senator hire an individual to work part-time on his personal staff while the individual remains a full-time employee of a registered lobbying group? The individual, who does not himself lobby Members of Congress, would work 15 hours per week at a salary rate exceeding $25,000 per year, on legislative matters. The purpose of the part-time arrangement is to afford the Senator an opportunity to decide whether to hire the individual on a permanent full-time basis.

Ruling:

Senate Rule 41, paragraph 2, states that "for purposes of the Senate Code of Official Conduct . . . an employee of the Senate includes any employee whose salary is disbursed by the Secretary of the Senate." As a result, individuals who are compensated for part-time work are treated as Senate employees for purposes of the Code.

Senate Rule 37, on Conflict of Interest, places upon Senate employees and their supervising Senators the initial and continuing responsibility for avoiding situations which create conflicts of interest, or the appearance of such conflicts. Paragraph 2 of Rule 37 states that no Member or employee of the Senate shall engage in any outside business or professional activity for compensation which is inconsistent or in conflict with the conscientious performance of official duties. The legislative history of this provision states that it "should be read to prohibit any outside activities which would represent a conflict of interest or the appearance of a conflict of interest." S. Rept. 49, 95th Cong., 1st Sess. (1977).

In addition, paragraph 3 of Rule 37 requires a Senate employee to report in writing to his Senate supervisor the nature of any outside business or professional activity or employment for compensation. The supervising Senator is then required "to take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate."

No Senate Rule explicitly prohibits hiring, for part-time work, an individual who is a full-time employee of a registered lobbying group but who himself does not lobby Members of Congress. The Senate Code of Official Conduct contains some specific provisions which deal with lobbyists and lobbying activities. Rule 35 prohibits the acceptance by Senators and Senate employees of gifts worth over $100 per year from lobbyists. Paragraphs 8 and 9 of Rule 37 prohibit post-term and post-employment lobbying by former Senators and former Senate employees for a one-year period after they leave the Senate. The gift and lobbying restrictions reflect a policy of separating certain specific activities from current Members and employees of the Senate, but these restrictions are not clearly and specifically applicable to the facts in this specific situation.

In many rulings concerning conflict of interest questions, the Committee has recognized that it is difficult to substitute its judgment for that of the supervising Senator. The Committee can call attention to relevant considerations, but absent facts which would indicate an actual conflict, the Committee noted that the supervising Senator must be the primary monitor of his staff's outside activities.

Finally, paragraph 5 of Rule 37 prohibits Senate employees who are compensated at a rate in excess of $25,000 per year and who are employed in excess of 90 days in a calendar year from affiliating with a firm, partnership, association, or corporation for the purposes of providing professional services for compensation. As the Committee was not certain that the individual will be a Senate employee in excess of 90 days while maintaining his present, outside employment, it was not possible to determine whether this outside employment constitutes an affiliation for the purposes of providing professional services.

INTERPRETATIVE RULING NO. 315

Date issued: April 3, 1980

Applicable Rule and Area: 34, Ethics in Government Act of 1978

Question considered:

A Member has been asked to participate in a golf tournament to benefit a memorial medical research fund. Corporations are contributing cash and aircraft in order to provide transportation and lodging expenses for the participants. May a Member accept these travel and lodging expenses? In addition, would the corporate donations, to the fund, of cash and the use of aircraft constitute campaign contributions by such corporations?

Ruling:

The Select Committee has previously ruled that participation by a Member of the Senate in a charitable, fund-raising event is a contribution by the Senator to the sponsor of the event. Transportation and lodging furnished by the sponsor is provided in consideration for the Member's participation and is not a gift for purposes of the Senate Code of Official Conduct.[39] In addition, Senate Rule 34 requires a Member of the Senate to make an annual public disclosure of the receipt of reimbursements received to cover travel-related expenses aggregating $250 or more from any one source during a calendar year.

Whether the donation by corporations, of cash and the use of aircraft to provide lodging and transportation to celebrity participants in a golf tournament, would constitute campaign contributions by such corporations is a matter within the jurisdiction of the Federal Election Commission.

INTERPRETATIVE RULING NO. 316

Date issued: April 3, 1980

Applicable Rule and Area: 35, Federal Regulation of Lobbying Act of 1946; Federal Election Campaign Act of 1971

Question considered:

May a Senate staff member accept reimbursement for travel expenses in connection with an appearance before the regional office of a federal agency in an effort to help resolve official difficulties attending the implementation of a particular statute in that State? A member of a local association with interest in the statute has offered to provide the staff member's travel expenses.

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[39] See Interpretative Ruling No. 29.

Ruling:

Rule 35 of the Senate Code of Official Conduct imposes a $100 limitation on gifts to Members, officers, and employees from entities with a "direct interest in legislation before the Congress", defined as organizations which either retain or employ a lobbyist registered under the Federal Regulation of Lobbying Act of 1946 or maintain a separate segregated fund for political purposes under the Federal Election Campaign Act of 1971, as amended, Rule 35, paragraph 1(b). It would appear, based on the information provided, that the providing of transportation by the local member of the association, in the circumstances described, would constitute a "gift". The Committee does not believe that the "necessary expense" exception to the definition of "gift" in Rule 35 is applicable in this instance since the Committee has previously ruled that the receipt of such "necessary expenses" must be in connection with either an appearance made before the group or organization which is to provide the expenses or an appearance made at an event sponsored by such group or organization.

It is the Committee's understanding that the prospective donor maintains a political committee and also a registered lobbyist. Accordingly, the company would be an entity with a "direct interest in legislation", under Rule 35, from which a Senate employee may receive gifts totalling no more than $100 in value in a calendar year. Thus the reimbursement of travel expenses in this instance is subject to such limitation.

We note that if the staff member's appearance before the agency was in connection with official duties, it would seem that a request for reimbursement from official funds would not be improper.

INTERPRETATIVE RULING NO. 318

Date issued: May 9, 1980

Applicable Rule: 40

Question considered:

May a Senator provide a national political committee with a copy of his mailing list of senior citizens in order for the committee to add the names and addresses to a list of individuals to whom the committee already sends a newsletter?

Ruling:

Senate Rule 40 states, at paragraph 5(c) that "the Senate computer facilities shall not be used . . . to produce mailing labels for mass mailings, or computer tapes and discs, for use other than in service facilities maintained and operated by the Senator or under contract to the Senate. . . ." The Report of the Special Committee on Official Conduct, Senate Report 95–49, in explaining Rule 40.5(c) states that "under this paragraph, mailing labels and computer tapes cannot be produced by the Senate facilities for use in any other facility, such as for campaign mailings." The author of this provision stated on March 23, 1977, at S4755 of the *Congressional Record,* it was his intention that the provision ". . . just restates that in no case are Members of the Senate or Senate Committees authorized to use Senate computer facilities for political or personal purposes."

The Committee concluded that the furnishing by a Member of a list of names and addresses, currently stored in the Senate computer facility, to a political committee for use by them in a mailing would be prohibited by paragraph 5(c) of Senate Rule 40, since the labels or tapes to be furnished would be used by the political committee at a facility which is not maintained or operated by the Senate.

INTERPRETATIVE RULING NO. 319

Date issued: May 9, 1980

Applicable Rules: 34 and 37

Question considered:

May a staff member of a Senate Committee provide economic analysis for a consulting firm? The outside employment would involve approximately 10 hours of work per week for about 8 weeks, and the work would be done exclusively at night or on weekends. As proposed, the Senate employee would provide analysis for a private consulting firm and the firm would advise its clients about prospects for Federal grants. The employee has indicated that the analysis would not concern or be connected with any legislative matter pending before the Senate Committee which employed him. He also states that should his analysis lead to an application for a Federal grant, the grant application would not be considered by any agency of the Federal government over which the employee's Senate Committee has jurisdiction.

Ruling:

Senate Rule 37.3, Conflict of Interest, prohibits a Senate employee from engaging in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties. From the information available, the Committee concluded that proposed outside activity was not prohibited by Rule 37.

However, Rule 37.3 requires the supervisor of a Senate employee to make the initial judgment as to whether a proposed activity would present a conflict of interest, because of either the time required by the activity or the nature of the activity itself. This paragraph imposes upon the supervisor the responsibility for continuing to monitor the activity and for taking such steps as necessary for the avoidance of a conflict or interference with Senate duties.

If the staff member is a reporting individual under Senate Rule 34, he is obligated to publicly disclose outside employment and earnings.

INTERPRETATIVE RULING NO. 321

Date issued: May 13, 1980

Applicable Rules: 34 and 37

Question considered:

May a subcommittee special counsel, who intends to be a full-time Senate employee for six months but who may then rejoin the law firm where he has been a partner, retain during his Senate employment a limited relationship with the law firm?

For the period of his Senate employment, the counsel plans not to be affiliated with the law firm for the purpose of providing professional services for compensation, and the firm will not use his name. The counsel will withdraw from litigation in which he was involved at the firm, will have no interest in fees for services rendered by the firm during the period in which he is not affiliated with it, and the firm will remove his name from its letterhead. The counsel has the option to resume affiliation with the firm after termination of his employment with the Senate, and during his Senate employment will retain, at his expense, pre-existing group insurance and his interest in the firm's pension plan.

Ruling:

Paragraph 5 of Senate Rule 37 provides that: "No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall (a) affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; (b) permit that individual's name to be used by such a firm, partnership, association or corporation; or (c) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed. For the purposes of this paragraph, "professional services" shall include but not be limited to those which involve a fiduciary relationship."

Based upon the facts presented, it appeared that Special Counsel and the law firm took all reasonable steps to comply with paragraph 5 of Rule 37. Accordingly, the Committee held that retention of the firm's group insurance benefits and pension benefits, at his expense, did not constitute a prohibited affiliation within the meaning of paragraph 5(a) of Rule 37.

The Committee reminded the supervising Senator that paragraph 3 of Rule 37 prohibits a Senate employee from engaging in any outside business or professional activity or employment for compensation unless he had described such activity in writing to his supervisor and the Rule places a continuing responsibility on the supervisor to take such action as is necessary for the avoidance of conflict of interest. Thus, the Senator should review any change in the Counsel's relationship with the firm during the time that he is employed by the subcommittee.

The Committee noted also that Senate Rule 34 (Title I of the Ethics in Government Act of 1978, as amended) requires that any individual who becomes an officer or employee of the Senate on or after January 1 of the calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year and who is compensated at a rate equal to or in excess of the annual rate of basic pay in effect for GS–16 of the General Schedules must file a Public Financial Disclosure Report within thirty days of becoming such an employee. The Select Committee has previously interpreted this provision to apply to employees who have committed themselves to work or who reasonably believe that they will be working for more than sixty days in the calendar year.

INTERPRETATIVE RULING NO. 323

Date issued: June 6, 1980

Applicable Area: Franking

Question considered:

A Senator has authorized an article for the journal of his State University's Graduate School of Business Administration. The article, which has been published, deals with the Senator's own views concerning the impact of certain regional economic theories affecting his State, especially as these theories are used in the formation of national economic policy. The Senator asks whether reprints of the article may be mailed under the frank to interested persons in his State?

Ruling:

The franked mail statute, 39 U.S.C. 3210 *et seq.*, states the policy of Congress that the franking privilege was enacted in order to assist and expedite the official business, activities, and duties of the Congress and these include all matters which directly or indirectly pertain to the legislative process or to any congressional representative function generally. In addition, Section 3210(a)(3)(A) of the statute authorizes the franking of mail matter "regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress."

The Select Committee observed that the article dealt not only with regional economic theories but also with the impact of several specific pieces of tax, environmental, and employment legislation recently passed by the Congress. Thus, the Committee ruled that reprints of the article would be frankable pursuant to Section 3210(a)(3)(A) of the franked mail statute, because the article, which concerned the impact of congressional legislative actions, informed the Senator's constituents of his views and the reasons why he voted for or against the legislation in question.

While it appeared that the article has been copyrighted by the state university, the Select Committee expressed no opinion as to the effect of copyright law on a reprint of the article.

INTERPRETATIVE RULING No 324

Date issued: June 25, 1980

Applicable Rule: 40

Question considered:

What is the applicability of the 60-day moratorium on the use of the Senate Recording Studio in Senate Rule 40, paragraph 6, to a Member recording an opening statement for a business conference to be held in a foreign country? The Member was asked to address the conference in his capacity as chairman of a Senate Subcommittee; he proposed to do so by means of a video recording; and stated to this Committee that the proposed recording of the four-minute opening statement would not be shown in the United States. In addition, the proposed use of the Senate Recording Studio would take place within the 60 days prior to the day the Member was a candidate for reelection to the Senate.

Ruling:

Senate Rule 40.6 provides as follows:

"(a) The radio and television studios provided by the Senate or by the House of Representatives may not be used by a Senator or an individual who is a candidate for nomination for election, or election, to the Senate less than sixty days immediately before the date of any primary or general election (whether regular, special, or runoff) in which that Senator is a candidate for public office or that individual is a candidate for Senator.

"(b) This paragraph shall not apply if the facilities are to be used at the request of, and at the expense of, a licensed broadcast organization or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954."

The Committee has previously ruled,[40] in connection with the 60-day moratorium on the use of the frank provided in the same Rule at paragraph 1, that Rule 40 does not apply to the mass mailings of a Senate Committee which are mailed under the frank of a Committee's Chairman, but that such mailings must relate only to the Committee's business and may not focus on a Member in a manner that could reasonably be deemed to be personal or political.

This ruling was based on a conclusion that there was no evidence in the Rule's legislative history that the Senate intended to include Committees and Subcommittees within the moratorium on franked mass mailings where the frank being used was that of a chairman who was covered by the Rule's 60-day moratorium. Therefore, the subcommittee chairman could use the Senate recording studio, in the manner set forth above, to prepare a video tape of opening remarks to be used at a conference which would be held abroad.

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[40] See Interpretative Ruling No. 141, dated June 7, 1978.

INTERPRETATIVE RULING NO. 325

Date issued: June 27, 1980

Applicable Area: Franking

Question considered:

May a Member of the Senate frank a letter of congratulations to recently naturalized citizens in his home State, and enclose with that letter information as to the Member's State offices and who to contact if a problem arises in a particular area of citizen concern?

Ruling:

The franking statute at 39 U.S.C. 3210(a)(1) states:

"It is the policy of the Congress that the privilege of sending mail as franked mail shall be established under this section in order to assist and expedite the conduct of official business, activities, and duties of the Congress of the United States."

The intent of the Congress in furnishing the franking privilege to Members is provided at 39 U.S.C. 3211(a)(2) which states:

"It is the intent of the Congress that such official business, activities, and duties cover all matters which directly or indirectly pertain to the legislative process or to any congressional representative functions generally, or to the functioning, working, or operating of the Congress and the performance of official duties in connection therewith, and shall include, but not be limited to, the conveying of information to the public, or the views and information of other authority of government, as a guide or a means of assistance in the performance of those functions."

Of particular note is 39 U.S.C. 3210(a)(3)(F) which specifically sets forth a statutory authorization for the franking of "mail matter expressing . . . congratulations to a person who has achieved some public distinction."[41]

The Committee held that becoming a citizen of the United States is a "public distinction" within the meaning of the statute, and that letters expressing congratulations for achieving citizenship are frankable as such. Further, the Committee concluded that the enclosure of information regarding services available at the Member's State offices was frankable as it conveyed information to the public as a means of assistance in the performance of the legislative and representative functions consistent with the Congressional "intent" provision of the franking statute.

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[41] On October 26, 1981 Section 3210(a)(3)(F) was amended to delete the authority to send under the frank letters of congratulations to a person who had achieved a "personal distinction."

INTERPRETATIVE RULING NO. 326

Date issued: July 1, 1980

Applicable Rule: 41 [42]

Question considered:

May an employee on the personal staff of a Senator, in his home state office, also serve during off-duty hours and without compensation as the National Committee Chairwoman of a political party from that state?

Ruling:

There is no provision of the Code of Official Conduct which prohibits such service by a member of the personal staff of a Senator. As S. Rept. 95-241 (95th Cong.) indicated, except for prohibitions on Rule 41.[41] with respect to the handling of campaign funds, "it is neither illegal nor a violation of Senate Rules for a member of a Senator's staff to work full-time in political campaigns while on annual leave or vacation time or while on leave of absence from his or her Senate duties. . . ." [43]

The prohibitions on political activity within the Code of Official Conduct are found in Rule 41. The legislative history of Rule 41 makes it clear that the Code was not intended to proscribe or restrict legitimate, voluntary political activity such as that in question.

In furtherance of legislative intent, this Committee has approved a Senate employee holding a position as a political party's precinct chairman as long as the state and local campaign activities were clearly separate and distinct from any fund-raising activities performed in connection with a Federal election, and the activities did not interfere with the employee's Senate duties. Interpretative Ruling No. 204 (Dec. 5, 1978).

Hence an employee on the personal staff of a Senate could, during off-hours and without compensation, serve as a political party's National Committee Chairwoman from her state. Such an employee, however, unless one of the Senator's two political fund designees, could not "receive, solicit, be the custodian of, or distribute any campaign funds," Interpretative Ruling No. 5 (May 11, 1977), nor could said employee solicit others to solicit funds or otherwise becom[e] involved to any substantial degree in political fund activity.

If the employee were a political fund designee, then she could handle political funds as set forth in Rule 41. The prohibitions on political fund activity found in Rule 41 do not, however, apply to state or local campaigns. Interpretative Ruling No. 153 (June 22, 1978); Interpretative Ruling No. 182 (September 29, 1978). If involvement in *any* campaign activity becomes extensive, however, the supervising Member may find it wise to remove the employee from the payroll for the period of extensive campaign involvement. *See,* for example, Interpretative Ruling No. 3 (May 5, 1977); Interpretative Ruling No. 309 (February 21, 1980). This is important for the supervising Senator to recognize, because the position of National Committeeman or Committeewoman for a political party is an important position which could conceivably require a great deal of time on the part of the Senate employee.

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[42] Rule 41, Standing Rules of the Senate, was previously Rule 49. It was renumbered by S. Res. 389 (consolidation of the Senate Rules), which passed the Senate on March 25, 1980.

[43] S. Rept. 95-241 (95th Cong.), quoted in Interpretative Ruling No. 154, June 22, 1978; p. 2. S. Rept. 95-241 accompanied S. Res. 188, which amended then Rule 44 (now Rule 41) relative to political fund activity by Senate officers or employees.

It should be clear from the foregoing that even if not a political fund designee, an employee would not be prohibited from handling funds for a state party organization for the purpose of paying off campaign debts incurred by a party's candidates for state and local office. But those activities must be clearly divisible from any of the organization's activities performed in connection with any federal election. That is to say if the proposed activities would involve the raising of a common fund to, for example, discharge the party's political debts on behalf of all its candidates, whether federal, state or local, the employee's participation in the common fund activities would be prohibited under Rule 41, even if the proceeds of the activities could be clearly apportioned between federal candidates and state or local candidates. Interpretative Ruling No. 182 (September 29, 1978).

Because the language of Rule 41 prohibits an employee from receiving, soliciting, being the custodian of, or distributing funds in connection with any federal election campaign, it would be necessary for the employee, as National Committee Chairwoman, to abstain from voting on any issue before the party's National Committee which would involve fund-raising activities for federal elections, or for any common-fund activities which funds would be used for, among others, federal elections, unless, of course, the employee is a political fund designee. The same interpretation would apply to the employee's appointment to a Committee, Subcommittee, Task Force, or other unit of the party's National Committee, which would be involved in fund-raising activities for federal election campaigns, or the disbursement or distribution of political campaign funds in federal elections.

We distinguish the case of a party National Committee Chairman or Chairwoman, in this case, from that of the Chief executive officer of a state political committee, in Interpretative Ruling No. 296. There we ruled that the latter's duties necessarily entailed, in the normal course of business, the acceptance, solicitation, retention or expenditures of funds in connection with federal election campaigns, the effective discharge of which duties would run afoul of the prohibitions of paragraph 1 of Rule 41. Such would not appear to be the case regarding the duties of a party National Committee Chairman or Chairwoman.

Finally, the Committee notes that in addition to restrictions on campaign activity imposed by Senate rules, there are also statutory prohibitions against certain types of political activity by Senate employees. *See* 18 U.S.C. sections 602, 603 (solicitation of political contributions), 606 (intimidation to secure political contributions), and 607 (making political contributions).

In sum, an employee on the personal staff of a Senator, in his home state office, may serve as a political party's National Committee Chairwoman from that state, if done voluntarily during off-hours, and without compensation; if it does not interfere with the performance of her Senate staff duties; and if it does not entail the handling of political campaign funds in federal elections, unless said employee is one of the Senator's political fund designees, in which case the employee may handle federal election campaign funds within the limits of Rule 41.

INTERPRETATIVE RULING NO. 327

Date issued: July 1, 1980

Applicable Rule: 34

Question considered:

For reporting purposes, how is a gift of a season pass to a theatre or sporting event or a membership in a club to be valued?

Ruling:

Section 107(3) of the Ethics in Government Act of 1978 (2 U.S.C. 707(3)), which has been adopted as Rule 34 of the Standing Rules of the Senate (Public Financial Disclosure) defines gift as "a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include:

> (a) bequest and other forms of inheritance;
>
> (b) suitable mementos of a function honoring the reporting individual;
>
> (c) food, lodging, transportation, and entertainment provided by State and local governments, or political subdivisions thereof, by a foreign government within a foreign country, or by the United States Government;
>
> (d) food and beverages consumed at banquets, receptions, or similar events;
>
> (e) consumable products provided by home State businesses to a Member's office for distribution; or
>
> (f) communications to the offices of a reporting individual including subscriptions to newspapers and periodicals;"

As to the value assigned for reporting purposes to the gift of a season's pass to the theatre or sporting events, or a gift to membership in a club, the Committee believes that the value for reporting purposes is the cost paid by the donor, regardless of the extent, if any, of the use of the pass or membership by the donee.

The Committee has also concluded that the value of a gift of a season pass is the value at the time of acceptance.

INTERPRETATIVE RULING NO. 328

Date issued: July 11, 1980

Applicable Area: Franking

Question considered:

May a Member of the Senate frank a letter to constituents encouraging them to recommend that their children attending colleges enroll in ROTC programs?

Ruling:

Title 39 U.S.C. 3210(a)(2) indicates that the use of the frank by Members of Congress is intended to assist them in the performance of their official duties. This is meant to encompass all matters which relate directly or indirectly to the legislative and/or representative function of the Member. 39 U.S.C. 3210(a)(3)(A) specifically authorizes the use of the Member's frank with regard to "programs, decisions, and other related matters of public concern or public service including any matter relating to actions of a past or current Congress."

The Committee held that in a time when the all-volunteer enlistment program for the United States Armed Services is attempting to fill the manpower requirements necessary to maintain full military preparedness, a letter written by a Member encouraging participation in available college military programs specifically authorized by Congress was sufficiently related to a matter of public concern or public service as contemplated by 39 U.S.C. 3210(a)(3)(A). It was therefore the conclusion of the Committee that the letter encouraging enrollment in ROTC programs was frankable under the franked mail statute.

INTERPRETATIVE RULING NO. 329

Date issued: August 26, 1980

Applicable Area: Franking

Question considered:

May a Senator use his franked mail privilege to enclose, in an otherwise frankable mailing, a "wallet card" which lists information for senior citizens, including telephone numbers of local government agencies which serve senior citizens?

Ruling:

The Senator proposes to mail a response to each letter he receives from a senior citizen. In that response, he proposes to include a "wallet card" which lists the telephone numbers of selected State and local agencies offering assistance to senior citizens. While some of the listed agencies are public and some are private, all appear to have only a State or local focus and none of the listed organizations is an agency of the Federal government, nor are any of the organizations listed related to the Congress.

The franked mail statute, at 39 U.S.C. 3210(a)(3), states the intent of Congress that the franking privilege of a Member of Congress shall include "the conveying of information to the public . . ." While section 3210(a)(3)(A) specically authorizes the franking of mail matter "regarding programs, decisions, and other related matters of public concern or public service . . .", the Select Committee has previously taken the position that "these matters relate principally to the Federal Government. Matters of purely State or local concern are not frankable". (See Chapter 2, paragraph 3 of the *Regulations Governing the Use of the Mailing Frank).*

The "wallet card" which was proposed to be enclosed in franked mailings to senior citizens apears to deal exclusively with telephone numbers of various State, county, and private agencies and organizations which assist senior citzens. For this reason, the Committee ruled that the "wallet card" would not be frankable because it did not relate to matters of public concern involving the Federal government nor did it relate to "the functioning, working, or operating of the Congress . . ." per section 3210(a)(3) of the franked mail statute.

INTERPRETATIVE RULING NO. 330

Date issued: August 26, 1980

Applicable Rule and Area: 38, Federal Election Campaign Act

Question considered:

May a Member use excess campaign funds from his principal campaign committee to defray the cost of entertaining his staff?

Ruling:

The use of excess campaign funds is governed by the Federal Election Campaign Act and Senate Rules. The Act, as amended by P.L. No. 96-187, provides at section 439(a) of Title 2, United States Code, that excess campaign funds may be used by a holder of Federal office "to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office." Senate Rule 38 allows a Member to defray "expenses incurred by a Member in connection with his or her official duties" from either personal funds or, "funds derived from a political committee."

The Committee concluded that a Member's use of excess campaign funds from his principal campaign committee to defray the cost of entertaining his staff would not violate the requirement of Rule 38 that "expenses incurred by a Member in connection with his official duties shall be defrayed only from . . . (c) funds derived from a political committee . . . " In addition, the Committee further concluded that such a use of funds from a Member's principal campaign committee would not violate the prohibition in paragraph 2 of Rule 38 on the conversion of contributions to the personal use of a Member.

The Committee noted that this interpretation of Rule 38 has no bearing on the question of what kinds of expenses are "official expenses" as that term may be interpreted by the Committee on Rules and Administration or the Senate Disbursing Office for the purpose of making reimbursements to Members from Government funds. In addition, the Committee expresses no view on the tax consequences to a Member or to his principal campaign committee on the use of campaign funds to defray the cost of entertainment of staff. Further information on these issues can be found in a report of the Committee on Finance, "Tax Status of Funds Expended by a Political Committee", S. Rept. 95-779 (1978), and in Revenue Ruling 78-373 on Deductibility of Expenses paid by Members of Congress.

INTERPRETATIVE RULING NO. 331

Dated issued: September 3, 1980

Applicable Area: Franking

Question considered:

A Senator has introduced legislation concerning an environmental issue. A national environmental group is interested in the bill and has asked the Senator to supply them with a quantity of reprints of the legislation and the Senator's remarks in the *Congressional Record* upon introducing the bill. The Senator, who is a candidate for reelection to the Senate and is within the 60-day moratorium established by the Senate Rule 40, asks whether it would be proper for him to request that the Senate Service Department reprint a large quantity of his introductory remarks from the *Congressional Record* and whether he can use his franked mail privilege to mail reprints of the bill and the *Congressional Record* remarks to the environmental group, who will then enclose the reprints in a newsletter mailing which they regularly send to their membership?

Ruling:

Concerning the use of the Service Department to reprint copies of a Senator's remarks from the *Congressional Record,* the Select Committee stated that no provision of the Code of Official Conduct would preclude such a request. The Select Committee had previously stated that the fact that the material would ultimately be disseminated by a private group rather than directly by the Senator would not preclude such reprinting by the Service Department.[44] In this instance, as in all other instances in which a Senator requests that the Service Department prepare printed material, the Senator must make the judgment that such a request is made in connection with his official duties.

Concerning the use of the mailing frank to forward such reprints to the environmental group, the Select Committee stated that section 3212 of Title 3, U.S. Code, the franked mail statute, provides that Senators may send "any part of, or a reprint of any part of, the *Congressional Record,* including speeches or reports contained therein, if such matter is mailable as franked mail under section 3210." Section 3210(a)(3)(A) of the statute authorizes the franking of mail matter "regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress," The Select Committee ruled that taken together, sections 3210(a)(3)(A) and 3212 provide authority for the Senator to mail as franked mail, reprints of his remarks from the *Congressional Record* concerning the introduction of the environmental legislation.

In response to the Senator's question as to whether the fact that he is a candidate for reelection to the Senate would impact upon his use of the frank to forward the reprints, the Select Committee stated that, based upon the assumption that the reprinted matter being forwarded in response to the environmental group's request was to be mailed in one mailing, the restrictions imposed upon Senators who are candidates for reelection and who seek to use their mailing frank for "mass mailings" (cf. Senate Rule 40), would not preclude this specific use of the frank. In this factual setting, although the Senator was within a 60-day moratorium established by Rule 40, the mailing to the environmental group would not be a "mass mailing" because the term "mass mailing" is defined as "any mailing with a 30-day period of more than 500 pieces of substantially identical content." In this instance there was to be a one-time mailing, in bulk, under a single use of the frank and thus the 500-piece threshold of Rule 40 would not be met.

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[44] See, Interpretative Ruling No. 127, dated May 12, 1978.

INTERPRETATIVE RULING NO. 332

Date issued: September 3, 1980

Applicable Rule: 38

Question considered:

A Senator holds periodic town meetings throughout his State, and in the past, has notified residents of future town meetings in their area by franked postcards. In the alternative, the Senator proposes to prepare meeting notices and distribute the notices to grocery stores in his State, for dissemination to the public. Would such a proposal be consistent with the Code of Official Conduct?

Ruling:

While Senate Rule 38 prohibits the defrayal of expenses incurred in connection with a Senator's official duties from other than one of the four sources specifically identified in the Rule, the Senator states that the costs of preparing the town meeting notice will be defrayed from one of the sources of funding listed in Rule 38. In addition, while the Select Committee has previously ruled that in-kind donations of goods and services for official purposes fall under the prohibitions of Rule 38 (see I.R. No 16, dated May 23, 1977; I.R. No. 43, dated July 13, 1977; and I.R. No. 72, dated September 29, 1977), the Committee concluded that such "in-kind contribution" rulings do not preclude a Senator's distribution of town meeting notices to grocery stores where such notices will be made available to the general public because the services are of a de minimus nature, and are available to other responsible organizations.

INTERPRETATIVE RULING NO. 333

Date issued: September 3, 1980

Applicable Area: Franking

Question considered:

May letters of congratulations be sent under the frank to senior citizens who have attained their high school diploma through an adult education program?

Ruling:

Section 3210(a)(3)(F) of Title 39 of the United States Code authorizes the franking of "Mail matter expressing . . . congratulations to a person who has achieved some personal or public distinction." On October 26, 1981, section 3210(a)(3)(F) was amended to delete the authority to send under the frank, letters of congratulations to a person who has achieved a "personal distinction".

A franking regulation promulgated by the Committee declares that "congratulations to graduating students or to newlyweds, or birthday greetings which are not incidental to an otherwise frankable mailing are not considered frankable mail."

The Committee concluded that the attainment of a high school diploma by a senior citizen is sufficiently distinguishable from the usual circumstances surrounding a high school graduation as to constitute a "public distinction" within the meaning of the Act. Therefore a letter congratulating the senior citizen for that accomplishment may be franked.

INTERPRETATIVE RULING NO. 334

Date issued: September 3, 1980

Applicable Rule: 35

Question considered:

Is it permissible under the Code of Conduct for a Senate employee to accept from a public research foundation travel, food, and lodging expenses for a three-week visit to the foundation to edit certain papers which the employee's supervising Senator asked the foundation to publish?

Ruling:

The Senate employee edited certain papers that were prepared for and presented to Members of Congress and congressional staff members during a Congressional Roundtable co-sponsored by the employee's supervising Senator. During the trip the foundation paid the employee's travel, food, and lodging expenses, and he remained on the Senate payroll, engaging in the activity as a work assignment for the Senator and not on leave time. The Senator indicated that he "regarded this activity on the employee's part as being consistent with his official duties."

Paragraph 1(a) of Rule 35 on Gifts prohibits Senators, officers, and employees of the Senate from accepting gifts with a value in excess of $100 in any calendar year from a prohibited source, as that term is defined by the Rule. Paragraph 2(a) of the Rule, however, excepts from the definition of "gift" any payment where "consideration of equal or greater value is received" by the party making the payment.

The Committee determined that the employee's editing work was a substantial service to the foundation in connection with its publication of the papers, and therefore "consideration of equal or greater value (was) received" by the foundation such that its payment of travel, food, and lodging expenses was not a gift within the meaning of Rule 35. Accordingly, since the expenses furnished to the employee were therefore exempted from the Rule 35(a) prohibition, it was not necessary to determine whether the source furnishing the expenses was a prohibited one, and the trip and the employee's acceptance of expenses were therefore permissible.

The Committee noted that if the employee was required to file a financial disclosure statement under the Ethics in Government Act of 1978 (i.e., if he was an employee of the legislative branch for more than sixty days and was compensated at a rate equal to or in excess of the annual rate of basic pay in effect for GS-16 during the calendar year), he would be required to report the identity of the source and a brief description of reimbursement received from any source aggregating $250 or more in value and received during the preceding calendar year.

INTERPRETATIVE RULING NO. 335

Date issued: September 3, 1980

Applicable Area: Franking

Question considered:

A Committee Chairman proposes to use his frank to mail a survey to 3,000 research and development firms asking for their comments on the Federal Government's research and development efforts. The results of the survey will be used by the Committee to support a bill which the Committee has reported to the Senate. In addition, the Chairman proposes to enclose with the survey a pre-addressed, franked, return envelope which would enable the recipient to return the survey results to the Committee. The Chairman asks whether these specific uses of the frank are authorized by the franked mail statute.

Ruling:

Section 3210(a)(3)(c) of Title 39, U.S. Code, the franked mail statute, authorizes the franking of questionnaires "seeking public opinion on any law, pending or proposed legislation, public issue, or subject." The Select Committee ruled that a survey seeking comments about the research and development programs of the Federal Government from businesses engaged in research and development work would be within the definition of a "questionnaire" as that term is used in section 3210(a)(3)(c) of the statute, with the result that the frank of a Senator could be used to mail the proposed survey.

Chapter Two, paragraph 5 of the *Regulations Governing the Use of the Mailing Frank*[45] states that "a Senator may provide a franked pre-addressed mailer or envelope for the return of responses to a franked questionnaire as intended by section 3210(a)(2) of Title 39, U.S. Code, which specifically authorizes the use of the frank in 'requesting the views of the public'." The Select Committee held, given the facts presented, that a Committee Chairman would be authorized to enclose, with the survey, a self-addressed, franked envelope for use by the recipient of the survey in responding to the Committee's request for information and views on the federal research and development process.

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[45] The Senate Committee on Rules and Administration has adopted regulations limiting the circumstances under which questionnaires may be returned under the frank.

INTERPRETATIVE RULING NO. 336

Date issued: September 5, 1980

Applicable Rules: 34, 35, and 37

Question considered:

What is the applicability of the Code of Official Conduct to the spouse of a Member, officer or employee of the Senate who has been offered a position on the board of directors of an American corporation?

Ruling:

In this situation, the spouse is an attorney who has established an independent professional reputation over a period of years which appears to qualify this individual for any number of possible offers to serve on a corporate board of directors.

While paragraph 6 of Rule 37 prohibits a Member, officer, or employee of the Senate, who is compensated at a rate in excess of $25,000 per year and is employed for more than ninety days in a calendar year, from serving as an officer or director of any publicly held or publicly regulated corporation, financial institution or business entity, this prohibition is not applicable to the spouse of a Member, officer or employee. However, the Select Committee recognized that while the activities of a member of a board of directors are generally confined to establishing matters of corporate policy, rather than directing the course of day-to-day corporate business, should a spouse's duties as a director include "lobbying" other Members, officers, or employees of the Senate, a question could arise about such activities which might reflect upon the Senate as an institution.

Additionally, the Committee pointed out that Rule 34, "Public Financial Disclosure", requires a reporting individual to disclose the source of any director's fees or other earned income in excess of $1,000 received by a spouse and that the prohibitions of Rule 35, "Gifts", are applicable not only to Members, officers, and employees but also to spouses and dependents as well.

INTERPRETATIVE RULING NO. 337

Date issued: September 15, 1980

Applicable Area: Franking

Question considered:

A Senator proposes to create a series of non-partisan, non-political "Citizen Advisory Committees" throughout his State. The Committees will have a limited number of members, who will represent a cross-section of their respective communities and their purpose will be to provide advice and suggestions to the Senator with respect to pending legislation and issues before the Congress. The

Senator asks whether his franked mail privilege might be used to mail the letters of invitation to individuals chosen to become members of the "Committees".

Ruling:

The use of the Senator's frank to mail the letters of invitation appears to be authorized by sections 3210(a)(1) and 3210(a)(3) of Title 2, U.S. Code, the franked mail statute. These sections provide authority to send mail as franked mail "in order to assist and expedite the conduct of the official business, activities and duties of the Congress . . . (which) shall include, but not be limited to, the conveying of information to the public and the requesting of the views of the public . . ."

As to the creation of "Citizen Advisory Committees", the Select Committee ruled that provided such "Committees" were non-partisan and non-political, there appears to be nothing inherently wrong with the proposal. However, the Senator was reminded that it was his responsibility to insure that a distinction was maintained in the public's eye between individuals who were members of the "Citizen Advisory Committees" and individuals who were campaign workers. The distinction must be maintained in order to insure that the "Committees" limit their activities to providing advice and suggestions on matters before the Congress as opposed to advocating partisan, political positions on issues or candidates.

INTERPRETATIVE RULING NO. 338

Date issued: September 23, 1980

Applicable Rule: 37

Question considered:

Is a Senate employee who works part-time in a Member's office in violation of the prohibition in paragraph 5 of Senate Rule 37 on affiliating with a "firm, partnership, association, or corporation for the purposes of providing professional services for compensation" because of his continuing, full-time employment as a writer for a organization which lobbies the Congress?

Ruling:

In defining the scope of the prohibition, the paragraph states, "[f]or purposes of this paragraph, 'professional services' shall include, but not be limited to, those which involve a fiduciary relationship." In the normal course of business, the Committee does not believe that performing work as a writer constitutes the kind of "professional services" contemplated by the definition provided in Rule 37, and believes that the individual's work for the non-Senate organization is not prohibited by paragraph 5. The Committee reminded the employing Senator that paragraph 3 of Rule 37 requires the supervising Senator of any Senate employee who engages in non-Senate employment "to take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate. The Committee noted further that because of the employment relationship which will continue to exist between the part-time employee and that employee's other employer, a business lobbying organization, the supervising Senator will of course need to be especially vigilant and particularly sensitive to guard against a conflict of interest arising.

INTERPRETATIVE RULING NO. 339

Date issued: September 25, 1980

Applicable Rules: 35 and 37

Question considered:

May a Senate employee accompany her husband who is a lobbyist on business trips, the expenses of which are paid for by the husband's employer, a corporation which is a prohibited source within the meaning of paragraph 1(b) of Rule 35 on Gifts?

Facts:

While a part of the husband's corporate duties includes lobbying other Senate committees, the Senate committee which employs the wife has no jurisdiction over matters of interest to the corporate employer, and the Senate employee's duties are in no way related to the business interests of her husband's employer.

Additionally, the husband's corporate duties include travel for the purpose of attending certain corporate, business, and trade meetings on behalf of his employer. It is the corporation's practice both to encourage employee spouses to attend selected meetings and to pay the expenses of those spouses who attend.

Discussion:

While paragraph 1(a) of Rule 35 prohibits Members, officers, employees, their spouses and dependents from accepting gifts (as defined by paragraph 2(a) of Rule 35) aggregating over $100 during a calendar year from a prohibited source (as defined in paragraph 1(b) of Rule 35), unless a waiver is granted, the Committee found that under the facts presented here, no gift was received by the Senate employee.

A search of the legislative history of Rule 35 contains no debate or conclusions on this particular situation. The Committee concluded, however, that the provisions of the Rule, and its legislative history, suggest that, under certain circumstances, the payment by a spouse's employer of necessary travel expenses of wives or husbands incurred by them while accompanying their spouses on trips relating to the spouse's business duties is not a gift within the meaning of Rule 35.

The Committee noted that Rule 35 contains an exception to the definition of a gift for the necessary expenses of official travel. During debate on the "necessary expenses" provision of the Rule, it was stated that the necessary expenses incurred by the spouse of a Senator in accompanying the Senator to an appearance before the sponsoring organization paid by the sponsoring organization was not to be considered a gift under the Gift Rule. While the terms of the "necessary expenses" exception do not encompass travel for other than Senate related purposes, the thrust of the legislative policy articulated in that exception militated against a determination that the payment of necessary travel expenses in this case was a gift to the Senate employee-spouse.

Here the corporation defraying the expenses had a policy of encouraging the involvement of its employees' spouses in corporate sponsored or related activities. Thus, the company would not consider the payment of the Senate employee-spouse's travel expenses a gift, but rather, an ordinary and necessary expense of conducting its business. The company would have provided the same food, beverages, lodgings, entertainment and transportation to their employee's spouse whomever the spouse was—Senate employee or not—and there was no indication that she was treated any differently than other spouses. Finally, it was stated that no effort was made in this case to influence the employee in the present or future performance of her Senate duties.

The Committee therefore found that on these facts, the payment of such expenses should not be characterized as a gift to an employee for Rule 35 purposes, hence the practice and conduct in question were not impermissible.

A second question presented is whether the activities of the employee may raise a conflict of interest issue. Rule 37 (Conflict of Interest), paragraph 2, states: "No Member, officer, or employee shall engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties."

The Committee has read the prohibition against outside business or professional activity or employment for compensation to include activities for which reimbursements for incurred expenses are received.

Pursuant to this Rule, Senate employees should be aware of the potential for the exertion of improper influence by those with whom they come in contact because of their spouse's employment. Additionally, in situations which raise the question of whether a particular activity might give rise to a conflict of interest, the Committee invokes paragraph 3 of Rule 37 which requires the employee to notify his or her supervisor of the proposed activity and which places on the employee's supervisor the initial responsibility to take appropriate steps to guard against the arising of a conflict of interest.

Ruling:

In the circumstances discussed, the payment of travel expenses is not prohibited by either the Rule on Gifts or Conflicts of Interest.

INTERPRETATIVE RULING NO. 340

Date issued: November 26, 1980

Applicable Rule and Area: 38, The Federal Election Campaign Act

Question considered:

May a Member use excess campaign funds from his or her principal campaign committee to defray the costs of photographs of the Member, or photographs that otherwise relate to his official duties, that are furnished to the press, furnished to constituents in response to their requests, or used in publications (such as newspaper columns) prepared and distributed by the Member's office for informational purposes?

Ruling:

The use of excess campaign funds is governed by both the Federal Election Campaign Act and Senate Rules. 2 U.S.C. Section 439a permits such funds to be used for any lawful purpose, including the ordinary and necessary expenses incurred in connection with one's duties as a holder of public office. In addition, Senate Rule 38 allows Members to defray office expenses from "funds derived from a political committee"; however, paragraph 2 of Rule 38 provides that no campaign contributions may be converted to the personal use of any Member. "Personal use", as that term is used in Rule 38, does not include reimbursement of "expenses incurred by a Member in connection with his official duties."

The Committee considers that, for the purposes of Rule 38, the costs of photographs of a Member, or photographs that otherwise relate to his official duties, that are furnished to the press, furnished to constituents upon request, or used in publications of the Member's office are the kinds of expenses which are incurred by a Member in connection with his or her official duties. Consequently, excess campaign funds from a Member's principal campaign committee may be used to pay these expenses, either directly or as reimbursements should the Member pay the expenses from personal funds.

INTERPRETATIVE RULING NO. 342

Date issued: December 10, 1980

Applicable Rule: 37

Question considered:

May a Senator serve on the board of directors of a statewide community action agency which administers programs funded by subcommittees and committees on which the Senator serves?

The community action agency, a non-profit corporation in the Senator's home State, receives from 60 to 70 percent of its funds from the federal government, either directly, or indirectly through the State. The Senator's position would be uncompensated and the Senator would be expected to attend board meetings in the State several times a year.

Ruling:

Paragraph 6 of Rule 37 on Conflicts of Interest prohibits service by a Senator or Senate employee as an officer or member of the board of a publicly-held or regulated organization, excluding, however, organizations exempt from taxation under section 501(c) of the Internal Revenue Code of 1954 if the service is performed without compensation. Since the community action agency is 501(c) organization and the Senator would serve without compensation, the Senator may serve on the board without violating paragraph 6. The

Nelson Committee Report, which accompanied Senate Resolution 110 (Senate Code of Official Conduct), makes it clear, however, that such service is still "subject to the general admonitions of paragraphs 1 and 2 of the rule and all Members . . . should exercise great care in avoiding all a conflicts of interest or the appearance of conflict of interest." S. Rept. 49, 95th Cong., 1st Sess. 44 (1977).

Paragraph 2 of Rule 37 states that "no Member, officer, or employee shall engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties." The Committee has previously found conflicts of interest where Senate employees have taken uncompensated positions on boards, commissions, or advisory councils of organizations that receive or seek federal funding from agencies with respect to a committee on which the supervising Senator sits has appropriation or oversight functions, or otherwise involves matters with which the committee is concerned."[46]

The Committee stated that, based on the facts presented, the Senator's acceptance of the invitation to serve on the board of directors of the community action agency could lead to conflict of interest because subcommittees and committees on which the Senator serves have legislative and oversight functions relating to programs that are administered by the agency and substantially funded by the federal government. The Committee therefore recommended that the invitation not be accepted.

INTERPRETATIVE RULING NO. 343

Date issued: February 4, 1981

Applicable Area: Anti-Nepotism Statute

Question considered:

Does the term "relative" as used in the Federal Anti-Nepotism Statute, 5 U.S.C. 3110(a)(3) include the niece or nephew of a spouse of a Senator?

Ruling:

This question has been addressed by the American Law Division of the Library of Congress in a memorandum dated April 28, 1978. In that memorandum, the American Law Division pointed out that the term "relative" is specifically defined in the statute, that the definition does not include the nephew or niece of a public official's spouse and that nothing in the legislative history of the statute provides any indication that the Congress intended the term "nephew", as used in the statute, to have any meaning other than that found in common legal usage, i.e., that the term encompasses only the son of one's brother or sister. In addition, the memorandum points out that this interpretation is consistent with the position taken by the Office of Personnel Management, which, in the Federal Personnel Manual, at Chapter 310, subchapter 1, section 1–

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[46] See Interpretative Rulings Nos. 23, 227, 286, and 308.

2(c), defines "nephew" as "the son of a public official's brother or sister".

The Select Committee agrees with this interpretation and has ruled that the son or daughter of a brother or sister of a Senator's spouse would not be a "nephew" or "niece" for purposes of the anti-nepotism statute.

INTERPRETATIVE RULING NO. 344

Date issued: February 16, 1981

Applicable Rules: 34 and 37

Question considered:

A newly-elected Senator who had withdrawn as a partner in a law firm prior to his swearing-in as a Member of the Senate, but who, despite his best efforts, has been unable to wind up his practice before taking office, asked whether, under Senate Rules, he could continue to serve as attorney for two clients involved in litigation begun before his election, and whether, as a sole practitioner, he could continue to represent his brother and that brother's wholly-owned corporation.

Ruling:

Paragraphs 2 and 5 of Rule 37 of the Code provide respectively: "No Member, officer, or employee shall engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties."

"No Member, officer, or employee . . . shall (a) affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; (b) permit that individual's name to be used by such a firm, partnership, association or corporation; . . . For the purpose of this paragraph, 'professional services' shall include, but not be limited to, those which involve a fiduciary relationship."

The Senator was advised that while paragraphs 2 and 5 limit the performance of professional services by Members, the Rule's legislative history did not indicate that the Senate had contemplated the problems confronted by a newly-elected Member in winding up his business affairs. The Committee noted that an attorney has rather clearly defined obligations, as an officer of the court, to his clients and to his former firm, which limit the exercise of his discretion to withdraw from a pending court case. With these facts in mind, the Committee advised the Senator to conclude his responsibilities expeditiously and in conformity with the spirit and purpose of paragraphs 2 and 5 of Rule 37.

Since one of the cases in litigation involved an instrumentality of the federal government, and since the activities of that entity could be affected by the actions of a committee to which the Senator was assigned, the Senator was advised to consider whether this situation might lead to or give the appearance of a conflict of interest. With an understanding that if a conflict of interest should appear the Senator would take appropriate action, the Committee found that his continued participation would not necessarily raise any other question as to conflict of interest under Rule 37.

With respect to the continuing representation of his brother, the Committee concluded that since this would involve new matters arising after the commencement of Senate duties, paragraphs 2 and 5 of Rule 37 are applicable but would not preclude the Senator's providing legal services as a sole practitioner, provided the matters of concern to his brother and his brother's business did not raise questions of conflicts of interest with the public trust of his office or the conscientious performance of the Senator's official duties.

Finally, the Senator was reminded that Title I of the Ethics in Government Act of 1978 (Rule 34) requires Members to disclose the source and amount of all income received during the preceding calendar year aggregating $100 or more. Consequently, the Committee concluded that income earned from his law practice in 1980 may be disclosed by identifying the Senator's former law firm as the source along with the amount of income earned. Additionally, 1981 income aggregating $100 or more, earned after joining the Senate, but derived from clients he had represented prior to his joining the Senate and whom he continued to represent, may be disclosed by exact amount stating that the source of income is "law practice". New clients who provided $100 or more in income must be disclosed by exact amount and by name.

INTREPRETATIVE RULING No. 345

Date issued: February 23, 1981

Applicable Rules: 34 and 35

Question considered:

May a Senator-elect accept a wristwatch from a business group in his home State, presented to him in the course of his appearance before the group in December, prior to swearing-in in January?

Ruling:

Rule 35, of the Standing Rules of the Senate provides that Members, officers, and employees, and their spouses and dependents, may not accept any gift or gifts having an aggregate value exceeding $100 during a calendar year from any person, organization, or corporation having a direct interest in legislation before the Congress, or from any foreign national, as those sources are defined in the Rule.

Since the Senator-elect was not a Member at the time of the presentation, he was outside of the coverage of the Rule and its prohibition. In addition, section 102(g) of the Ethics in Government Act of 1978, as amended, provides that reporting individuals are not obligated to disclose the receipt of gifts which are received at a time prior to Senate service.

INTREPRETATIVE RULING NO. 346

Date issued: March 6, 1981

Applicable Rule: 40

Question considered:

May a Member use names and addresses from his mailing list maintained by the Senate Computer Center to invite individuals to a charitable fund-raising event? The Member had received a number of letters in response to press accounts of a trip he had made to a foreign country, and the names of those who had written concerning the trip were entered on the Member's mailing list maintained by the Senate Computer Center. Photographs taken during the trip were to be offered for sale at a home State art gallery, and all money received from photograph sales was to be contributed to a charitable organization. The names and addresses from the Member's mailing list were not to be given to the art gallery or the charitable organization, all addressing work was to be done outside Senate offices by volunteers, and neither government stationery nor the mailing frank were to be used.

Ruling:

Paragraph 5 of Senate Rule 40 provides, "(t)he Senate computer facilities shall not be used . . . (c) to produce mailing labels for mass mailings, or computer tapes and discs, for use other than in service facilities maintained and operated by the Senate or under contract to the Senate." The author of this provision stated during debate on the Rule that it was his intention that the provision ". . . just restates that in no case are Members of the Senate or Senate committees authorized to use Senate computer facilities for political or *personal purposes.*" 123 Cong. Rec. S4755 (1977) (emphasis added).

The Committee concluded that the proposed use of a Member's mailing list for the benefit of the charitable organization would be for "personal purposes" and should therefore be avoided.

INTERPRETATIVE RULING NO. 347

Date issued: March 6, 1981

Applicable Rules: 34 and 35

Question considered:

An employee of the Senate, while on vacation, apprehended an individual who was accused and later convicted of stealing jewelry and coins from a department store. As a token of his appreciation, the operator of the jewelry department presented a valuable watch to the employee. May the watch be accepted by the employee and under what circumstances must receipt of the watch be disclosed?

Ruling:

Rule 35 ("Gifts") of the Standing Rules of the Senate generally prohibits the acceptance of certain "gifts" from individuals, organizations, or corporations having a direct interest in legislation before Congress. However, paragraph 2(a)(3) of the rule specifically excludes from the definition of "gift" a "bona fide award presented in recognition of public service and available to the general public." The Select Committee ruled that acceptance of the watch, under the circumstances set forth above, would fall within the exception set forth in paragraph 2(a)(3) of Rule 35.

Rule 34 ("Public Financial Disclosure"), which incorporates the provisions of Title I of the Ethics in Government Act of 1978 (P.L. 95-521), as amended, requires a reporting individual to disclose the identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food, or entertainment aggregating $100 or more in value received from any source other than a relative during the preceding calendar year. The Select Committee pointed out that the definition of the term "gift", as used in the Act at section 107 does not exclude bona fide awards presented in recognition of public service. Therefore, the Select Committee ruled that if the individual were a reporting individual for purposes of Rule 34, he or she must disclose the acceptance of the watch if its value were in excess of $100.

INTERPRETATIVE RULING NO. 347B

Date Issued; June 1, 1981

Applicable Area: Franking

Question considered:

May Senators provide individuals with self-addressed franked envelopes to facilitate the return of Privacy Act forms to the Senators' offices?

Facts:

Senators receive numerous requests from constituents seeking assistance in dealing with Federal agencies. The Privacy Act, however, prohibits Federal agencies from inquiring into the records of U.S. citizens without the express written permission of the individual on whose behalf the inquiry is being made. In order to facilitate the process of assisting their constituents, a Senator will often provide the constituents with a self-addressed envelope to be used to return the Privacy Act Forms to the Senator's office.

Applicable law and regulation:

The franked mail statute, 39 U.S. Code, section 3215, states that:

> A person entitled to use a frank may not lend it or permit its use by any committee, organization, or association, or permit its use by any person for the benefit or use of any committee, organization, or association.

The "Regulations Governing the Use of the Mailing Frank," however, provides that:

> The sending back of a return-addressed and franked piece of mail to a Senator, or to an officer of the Senate, by an addressee does not constitute a loan of the frank if the mail matter is frankable and if the return of the frank remains under the Senator's or officer's control and is

used solely to expedite the conduct of official Senate business.

Ruling:

Self addressed franked envelopes may be used to return Privacy Act forms authorizing a Senator's staff to conduct inquiries to Federal agencies. When sending these self-addressed franked envelopes, Senators should remind the constituent that the envelope is to be used only to return the form to their offices.

INTERPRETATIVE RULING NO. 349

Date issued: October 5, 1981

Applicable Rules: 37 and 41

Question considered:

A Member has established his principal compaign committee as a non-profit corporation under the laws of his home State. May the Member's Administrative Assistant, who has been designated to handle political funds under Senate Rule 41, serve as president of the corporation?

Ruling:

The Committee has ruled [47] that other than the restrictions on political fund-raising activity in Senate Rule 41, no rule expressly prohibits political activity by staff during off-duty hours or during established and reasonable annual leave time. If an employee intends to spend a substantial amount of time on campaign activities, however, the Committee has ruled that a Senator should use his or her best judgment in determining whether to remove the staff member from the Senate payroll or reduce his or her Senate salary commensurately. The Committee concluded that if the staff member's political activities conform to these guidelines, his political activity would not be prohibited.

Concerning the staff member's service as president of the incorporated entity, paragraph 6 of Senate Rule 37 provides:

"No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall serve as an officer or member of the board of any publicly-held or publicly-regulated corporation, financial institution, or business entity. The preceding sentence shall not apply to service of a Member, officer, or employee as—

> (a) an officer or member of the board of an organization which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, if such service is performed without compensation."

As the committee is an incorporated political committee whose activities are regulated in some areas by the Federal Election Commission pursuant to the Federal Election Compaign Act of 1971, the question arises whether the staff person's services as president of the corporation is prohibited by paragraph 6 of Rule 37. While that paragraph provides, at subparagraph (a), that a Senate employee may serve as an officer of an organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, a political committee is exempt from tax under section 527 of the IRC, not 501(c).

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[47] See Interpretative Ruling No. 302, dated February 21, 1980.

The Report of the Special Committee, which recommended the Code of Official Conduct, stated, with respect to the limitations provided by paragraph 6, that service on corporate boards or in corporate offices "may entail an unavoidable conflict of interest or the appearance thereof." (S. Rept. 95-49 at 43). The Report cited a study by the Association of the Bar of the City of New York for the proposition that a director or officer "actually becomes a fiduciary for the corporation and for its stockholders charged with the duty to further their interest. He obviously will find it difficult to do this at times because he is also charged with the duty of furthering the public interest, and the two interests may well be in conflict." (*Id.*, at 43-44).

The Committee went on to observe that service on the board or as an officer of a tax-exempt organization would not present the same kind of troubling issues, and that non-profit organizations have traditionally had less direct interest in the legislative process and the possibilities of conflict of interest are less marked.

In view of the absence of any indication that paragraph 6 was intended to apply to activity with a political committee, whether or not the committee is incorporated, and in view of the more specific limitations provided by Rule 41 (on political fund-raising) and by Committee Interpretative Rulings (concerning non-fundraising political activity), we do not believe that paragraph 6 of the Conflict of Interest Rule was intended to prohibit activity by Senate employees with a Member's principal campaign committee. Members should be aware, however, that paragraphs 2 and 3 of the Conflict of Interest Rule provide a general prohibition on non-Senate activity which is inconsistent or in conflict with the conscientious performance of official duties.

INTERPRETATIVE RULING NO. 350

Date issued: October 5, 1980

Applicable Rule and Area: 35 and the Federal Election Campaign Act

Question considered:

How may a Member defray expenses which are neither reimbursable from his or her Official Office Expense Allowance, nor directly related to campaign spending for re-election?

Discussion:

The Federal Election Campaign Act of 1971 (FECA), as amended, provides permission for a Member to use political funds for certain non-campaign purposes: ". . . contributions that are in excess of any amount necessary to defray . . . expenditures, and any other amounts contributed to an individual for the purpose of supporting his or her activities as a holder of Federal office, may be used to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office . . ." 2 U.S.C. 439a.

Regulations promulgated by the FECA distinguish between money which is given and spent "for the purpose of influencing any election for Federal office" (the definition of "contribution" and "expenditure" at CFR section 110.7(a) and section 110.8(a) and "funds donated" defined by the Regulations as "all funds . . . which are donated for the purpose of supporting the activities of a Federal . . . officeholder" (11 CFR section 113.1(a)). These provisions, standing alone, would allow a Member to use "contributions" and also "funds donated" to defray "any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office," which appears to be a broader range of purposes than the narrowly defined expense items for which the Official Office Expense Allowance is provided.

These provisions of the FECA must be considered, however, in light of Senate Rule 38:

PROHIBITION OF UNOFFICIAL OFFICE ACCOUNTS

1. No Member may maintain or have maintained for his use an unofficial office account. The term "unofficial office account" means an account or repository into which funds are received for the purpose, at least in part, of defraying otherwise unreimbursed expenses allowable in connection with the operation of a Member's office. An unofficial office account does not include, and expenses incurred by a Member in connection with his official duties shall be defrayed only from—

* * * * * * *

(c) funds derived from a political committee (as defined in section 301(4) of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431)) . . .

The Special Committee on Official Conduct recommended abolishing unofficial office accounts because accounts were not subject to any disclosure requirements and contributions were not subject to any limitations as to amount or source. *See,* S. Rept. 95-49 at 11. That Special Committee also found "that certain expenditures related to official duties inevitably will fall into a 'gray area.'" That is, certain expenditures will not be eligible for reimbursement by the Senate and, at the same time, will not be directly related to a campaign for election to public office. Rule 38 provides that contributions derived from a political committee (fully disclosed and regulated under the Federal Election Campaign Act) may be used to defray expenses incurred by a Member in connection with his or her official duties. The permission does not extend, however, to the use of what the FEC Regulations call "funds donated" because these funds are not covered by the disclosure, amount, and source limitation provided by the FECA.

A related matter to consider is the tax treatment that may be applied to the use of "excess campaign funds" to defray ordinary and necessary expenses incurred in connection with a Member's duties as a holder of Federal office. While this question is entirely within the jurisdiction of the Commissioner of Internal Revenue, further information is provided in a report of the Committee on Finance, "Tax Status of Funds Expended by a Political Committee," S. Rept. 95-779 (1978), and in Revenue Ruling 78-373 on Deductibility of Expenses paid by Members of Congress.

Ruling:

A Member may use political contributions to defray expenses incurred in connection with official duties.

INTERPRETATIVE RULING No. 351

Date issued: May 7, 1982

Applicable Area: Miscellaneous

Question considered:

Under what circumstances may a Member, in response to a specific request, donate an item for auction? Specifically: (1) May a Member donate an item purchased and charged against the official stationery account of the Senate? (2) May a Member donate publications (such as the *Agriculture Yearbook)* which have been allotted to Members for distribution? and (3) Is a distinction to be made in answering questions (1) and (2) based on the nature of the organization and the use to which the proceeds of the auction are to be put?

Discussion:

The Committee has previously ruled (Interpretative Ruling No. 175) that the donation of property in a Member's possession as a function of his being a Member of the Senate is not prohibited by any provision of the Code of Official Conduct, nor does it appear to violate any regulation of the Joint Committee on Printing or the Senate Rules Committee.

In specific response to the questions posed:

(1) Subject to the limitations in numbered paragraph (3) below, a Senator may donate to an outside group for auction an item of nominal value which happens to have been purchased and charged against the official stationery account of that Member. While there is no Senate rule or regulation governing this question, the Committee believes that the *intentional procuring* of such items with Senate funds for the purpose of donating them to outside groups for auction would at a minimum give the appearance of, and perhaps constitute, a misuse of government funds in that the items purchased would be for non-government use. The Committee takes this position irrespective of the nature of the outside group, and recommends that if an article is to be purchased for presentation to a group as an item for auction, the personal funds of a Member, or excess political funds of the Member's principal campaign committee, would be preferable sources for defraying the cost of such an item.

(2) Subject to the limitations in numbered paragraph (3) below, a Senator may donate to an outside group for auction a publication printed at government expense which has been allotted to him for

distribution, such as *Art in the Capitol, The Capitol,* or *Agriculture Yearbooks.*

(3) A distinction *can* be made with regard to these questions based on the nature of the organization and the use to which the auction proceeds are to be put. The Committee finds no problem with the donation of items to an outside group for auction where such items are of nominal value and are not intentionally procured with Senate funds for such purpose, *if* the donee group is a non-profit, non-political organization. The Committee is concerned that use of public property to raise funds for a for-profit enterprise or a political party could reflect discredit on the Senate. In addition, the Committee would likewise be concerned if the particular use to which the fund-raising proceeds were put were at variance with the stated purposes of the donee groups, i.e., if a tax-exempt non-profit charitable or educational institution were to use the proceeds of such an auction for political purposes.

These concerns lead the Committee to conclude that, upon request, a Member may donate property in his possession to an outside group for auction if such property is of nominal value and was not intentionally procured with Senate funds for such purpose; if the donee group is either a non-profit or a non-political organization; and if the uses to which the auction proceeds are to be put are neither for-profit nor political in nature. In addition, subject to the stated limitations regarding the nature of the donee and the use of the auction proceeds, a Member may donate to non-Senate groups publications printed at government expense, such as *Art in the Capitol, The Capitol,* or *Agriculture Yearbook.*

Ruling:

(1) Upon request, a Member *may* donate for auction an item purchased and charged against the official stationery account of that member *if* the item is of nominal value; was not intentionally procured for the purpose of donation; and the donee group is either non-profit or a non-political organization.

(2) Upon request, a Member *may* donate for auction a publication printed at government expense, such as the *Agriculture Yearbook, if* the item is of nominal value; was not intentionally procured for the purpose of auction; and the donee group is either non-profit or a non-political organization.

(3) A distinction *can* be made with regard to these questions based on the nature of the organization and the use to which the auction proceeds are to be put.

INTERPRETATIVE RULING No. 352

Date issued: August 2, 1982

Applicable Rule: 37

Question considered:

A Senate employee asked whether his activities as a professional racing car driver are in violation of Rule 37(5) (Conflict of Interest) of the Code of Official Conduct.

Facts:

The Senate employee had an oral agreement with an automotive accessories company which owns and maintains a race car. Under the agreement, the firm reimburses him for race-related expenses, pays him 45 percent of any prize money won, and provides him with driving equipment. Second, he has a similar agreement with another firm, which rebuilds engines, imports car parts, rents race cars to professional drivers, and contracts with automobile companies to race cars for them. Both firms may, at some future time, advertise their racing success with the employee identified as the driver. Third, he occasionally provides auto racing-related services to various automotive businesses. As an example, he states that he has written a story on a racing car for publication in an automotive magazine, with the race car's manufacturer paying for test expenses and the magazine paying for the article.

Discussion:

Paragraph 5 of Senate Rule 37 provides: "No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall (a) affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; (b) permit that individual's name to be used by such a firm, partnership, association or corporation; or (c) practice a profession for compensation to any extent during regular hours of the Senate office in which employed. For the purposes of this paragraph, 'professional services' shall include but not be limited to those which involve a fiduciary relationship."

The Committee concluded that the employee's relationship to the automotive firms was that of an independent contractor, and therefore is not an affiliation within the meaning of Rule 37(5)(a). The Committee also noted that the professional service addressed in paragraph 5 are typically those involving a fiduciary duty, including law, medicine, engineering, architecture and similar types of activities. It did not believe that race car driving is a profession within the meaning of Rule 37(5)(c), and accordingly, did not believe that paragraph 5 of Rule 37 prohibited the activity.

The Committee noted, however, that under Rule 37 an employee's supervisor has a continuing responsibility to evaluate and approve of an employee's outside activities so long as those activities continue.

Ruling:

The Committee ruled that the employee's relationship with auto racing firms did not violate paragraph 5 of Senate Rule 37. The Committee also noted that the employee had reported to his supervisor on his outside business activities as required by Paragraph 3 of Rule 37 and that the supervisor had concluded that race car driving would not result in any conflict of interest with his Senate Committee duties which are unrelated to auto racing.

INTERPRETATIVE RULING NO. 353

Date issued: August 23, 1983

Applicable Rule: 38

Question considered:

Members asked if they may accept the use of office space provided by a home State governor or local communities.

Facts:

In one instance a Member asked whether he may accept his home State governor's offer of the use of an office in the State Capitol. The offer was of an empty office which would be used by one of the Member's staff whose function would be to provide information to the governor, State legislature, and State officials on Congressional actions. In another instance, a Member asked if four of his home State members may periodically use office space provided by county and municipal governments as part of their community outreach and consitituent services work. Typically, a local government provides a room in a county courthouse for a few hours each week, every two weeks, or every month, depending on the frequency of visits.

Discussion:

Providing office space to a Member free of charge raises questions under Rule 38 of the Standing Rules of the Senate. Although the Rule does not contain any specific restrictions on the sources a Member may use to secure office space, the Committee has ruled that a Member may not accept in-kind contributions in connection with the carrying out of official Senate duties unless they are paid for with funds derived from one of the four sources listed in the Rule. Specifically, the Committee has ruled [48] that a Member may not accept the contribution of free use of space in a law firm, as an in-take center for federal casework, because acceptance would be tantamount to an in-kind contribution to defray unreimbursed expense of a federal officeholder.

The Committee has also ruled, however, that a Member may accept things of value from agencies of the federal government and from other Members of Congress, without paying for them from the sources set forth in Rule 38, because the Committee concluded that the Rule was not intended to prevent Members from using governmental goods and services where they are available on an equitable and non-partisan basis.

The Committee ruled that these considerations permit a Members to accept, without charge, the use of office space provided by State and local governments.

It is beyond the Committee's jurisdiction to deal with any questions that could arise relative to the use of office space which is provided to Members through the General Services Administration, or the amount of office furnishings and equipment provided to Members by the Senate Sergeant at Arms. Any questions in those areas should be addressed to the Committee on Rules and Administration.

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[48] See, for example, Interpretative Ruling No. 16, dated May 23, 1977.

Ruling:

Members may accept the use of office space from their State and local governments.

INTERPRETATIVE RULING NO. 354

Date issued: October 12, 1982

Applicable Rule: 40

Question considered:

A series of mailings, comprised of several groups of letters, has been sent by a Senator. Each group within the series contains letters dealing with a different subject matter from each other group, and no one group exceeds 500 pieces in number. Does such a series constitute a "mass mailing" as defined by Committee *Regulations* if each mailing within the series contains a common insert and the aggregate number for all mailings exceeds 500 within a 30-day period?

Discussion:

The *Regulations Governing the Use of the Mailing Frank* (Chapter Three, Paragraph (2)(b)) define "mass mailing" as "Any mailing within any 30-day period of more than 500 pieces of substantially identical content . . ." Previous Committee interpretations have involved factual situations in which a *single* mailing was at issue. The policy considerations which form the basis for requiring the registration of mass mailings and imposing a moratorium on their use by candidates for re-election, however, are directed at large quantities of mailings with substantially identical content. Thus, the Committee believes that a series of mailings, comprised of several groups of letters, each of which contains a letter dealing with different subject matter from the other groups, and no one group of which exceeds 500 in number, would nonetheless constitute a "mass mailing" if *all* mailings—regardless of the differing content of the letters—contain at least one common insert and the aggregate number for all mailings exceeds 500 within a 30-day period. A contrary conclusion would permit Members seeking reelection to avoid the mass mailing moratorium altogether by varying the content of letters sent in quantity to which identical inserts had been attached.

Ruling:

Such a series of mailings would constitute a "mass mailing".

INTERPRETATIVE RULING NO. 355

Date issued: October 12, 1982

Applicable Rule: 38

Question considered:

May a Member charge to his or her Official Office Expense Allowance the cost of personal telephone calls made to a spouse and family in Washington at times when the Member is away from Washington on official business? Although the calls are of a personal nature, the need to make them arises from the Member's duties to travel on official business.

Discussion:

While a Member's duties require frequent travel away from his or her family, the Committee believes that each Member is responsible for making a distinction between calls which are personal and calls which are official. Official calls are, of course, eligible for official reimbursement under procedures established by the Committee on Rules and Administration.

Ruling:

Only official calls are eligible for official reimbursement.

INTERPRETATIVE RULING NO. 356

Date issued: November 17, 1982

Applicable Area: Franking

Question considered:

Are letters publicizing programs for high school students frankable?

Facts:

In one instance, a non-governmental organization asked a Member to send a franked mailing to high school principals to publicize its program of having high school students participate in a mock constitutional convention. In another instance, a non-governmental organization, which administers international student exchanges, asked Members to send a franked mailing to high school principals inviting their nominees for participation in an international exchange program financed by a foreign government.

Discussion:

Section 3215 of Title 39, U.S. Code, provides: "A person entitled to use a frank may not lend it or permit its use by any committee, organization, or association, or permit its use by any person for the benefit or use of any committee, organization, or association . . ."

The Committee concluded that this provision does not allow Members to use their franked mail privilege to publicize or endorse programs administered by organizations which are themselves not authorized to mail matter under the frank; the statute therefore does not allow Members to use their franking privilege on behalf of these programs.

Ruling:

A Member's franked mail privilege may not be used to publicize or endorse programs administered by organizations which are themselves not authorized to mail matter under the frank.

INTERPRETATIVE RULING NO. 357

Date issued: December 16, 1982

Applicable Rules: 34 and 41

Question considered:

A Senate staff member, while on vacation leave, worked on the re-election campaign of his supervising Senator, as is permitted under Senate rules. Is it permissible under the Senate Code of Official Conduct for that staff member to be reimbursed by the Senator's principal campaign committee for expenses incurred by the staff member on behalf of the Senator's campaign?

Discussion:

The Committee has previously ruled[49] that campaign involvement by a Senate staff member while on vacation leave is permissible under Senate rules. Reimbursement to such a staff member for expenses incurred by him on behalf of the supervising Senator's re-election campaign effort would be permissible under the Senate Code of Official Conduct and applicable regulations and Interpretative Rulings issued thereunder.

Senate Rule 34 (Title I of the Ethics in Government Act of 1978, as amended) requires any reporting individual (as defined therein) to make annual disclosure of the receipt of reimbursements to cover expenses aggregating $250 or more from any one source during a calendar year.

We do not address the question of whether such a reimbursement would constitute an "expenditure" for purposes of the Federal Election Campaign laws, as that is a matter outside the jurisdiction of the Committee.

Ruling:

Such reimbursement would be permissible under the Senate Code of Official Conduct and applicable regulations and Interpretative Rulings issued thereunder.

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[49] See, e.g., Interpretative Rulings Nos. 3, 5, 22, 86, and 88.

INTERPRETATIVE RULING No. 358

Date issued: December 17, 1982

Applicable Rule: 37

Question considered:

A successful candidate for election to the Senate is the chairman of the board and chief executive officer of a publicly-traded company which he helped found and which has employed him in various executive positions for two decades. Having been elected to the Senate, the Senator-elect intends to resign as chairman and chief executive officer of the corporation. Regarding his proposed retirement from, transition service to, and agreement not to compete with, his former employer, are the following courses of action consistent with Senate rules?

A. Retirement Bonus

In consideration of his past service to the company, may the company award the Senator-elect a retirement bonus consisting of retirement benefits commencing in the year in which the Senator-elect will reach the normal retirement age of sixty-five? The retirement benefits would continue for the lifetime of the Senator-elect, except that should the period of his lifetime be less than ten years from the date such payments commence, the payments remaining during such ten-year period would pass to his heirs.

B. Convenant Not-to-Compete

May the Senator-elect enter into an agreement not to compete with his company for a period of five years following his departure from the Senate in exchange for which the company will compensate the Senator-elect in two equal installments, one at the time of execution, and the second one year therefrom?

C. Service as "Transition Advisor"

For the purpose of winding down and terminating the Senator-elect's involvement with the company in an orderly manner, may the Senator-elect serve the company as a "transition advisor", without compensation, for a period of seven months after taking his Senate oath so as to be available for the purpose of responding to inquiries from the company's new chairman about matters that occurred during the Senator-elect's tenure with the company that may be within his, the Senator-elect's, sole knowledge?

D. Exercise of Stock Options

During the proposed period of the Senator-elect's service as transition advisor, may he exercise stock options previously granted him by the company but which, absent such service as a transition advisor, would otherwise be lost to him?

Discussion:

A. Retirement Bonus

The Commission believes that a corporation's awarding of a retirement bonus to a former executive would be permissible under the facts as presented if the following conditions were met:

1. The retirement bonus must be awarded strictly and exclusively in consideration of the candidate's past service rendered to the corporation.

There could exist the appearance of impropriety occasioned by the Senator-elect's knowledge that his continued receipt of retirement plan payments would be dependent, as a practical matter, upon the economic health and well-being of the corporation. The Committee therefore believes that the retirement bonus should not be predicated or in any way dependent upon, or related to, the future performance of the corporation, its publicly-traded stock or debentures, or its future earnings.

3. Such a retirement plan should be provided in compliance with all reporting requirements of the Securities and Exchange Commission and the Employee Retirement Income Security Act of 1974.

While there are no other conditions which must be met, certain situtations which are dealt with by the Senate Code of Conduct, such as "buyout arrangements" are analogous. In this case, the Senator-elect is not bound by these guidelines, but may wish to consider them as applied, by way of analogy, to a retirement bonus factual situation similar to the instant matter:

1. Such past services rendered should be sufficiently substantial as to justly entitle the candidate to the receipt of such a bonus.
2. Such a retirement bonus should be a *bona fide* award of compensation in a manner not inconsistent with the usual and customary practices of the corporation.
3. The retirement bonus should consist of a sum certain, determined at the time of serverance from the corporation.
4. The sum certain should be paid either as a lump-sum, at severance, or an annual payment of a certain percent of the sum certain, payable within a reasonable period of time, and which sum certain should be funded in advance. Advance funding avoids any appearance or impropriety occasioned by the Member's knowledge that his continued receipt of retirement bonus payments would be dependent, as a practical matter, upon the economic health and well-being of the corporation.

B. Covenant Not-To-Compete

The Committee understands that the board wants to assure that the Senator-elect does not in the future enter into a business which would be in competition with the former company. The Senator-elect has therefore agreed to enter into a covenant not to compete with his company for a period of five years following his departure from the United States Senate, in exchange for which the company will compensate the Senator-elect by payments on January 1, 1983, and on January 1, 1984.

The Committee believes that such an arrangement, if consistent with the applicable statutes and case law of the governing jurisdiction, is permissible under the Standing Rules of the Senate and poses no problems regarding the propriety of the Senator-elect's conduct while in office.

C. Service As "Transition Advisor"

The Committee understands that the company has rquested that the Senator-elect remain as a transition advisor for a period of seven months to provide intermittent guidance to the new chairman; that the Senator-elect would be available for the purpose of responding to inquiries from the new chairman about matters that occurred during the Senator-elect's tenure with the company that may be within the Senator-elect's sole knowledge; that such a role would be confined to infrequent telephone conversations; that under no circumstances would the Senator-elect, upon taking the oath of office, be involved in giving any strategic or planning advice to the company, participating in any operating decisions, or exercising any fiduciary relationship with the company; and that this arrangement is necessary for the purpose of winding down and terminating in an orderly manner the Senator-elect's involvement with the company.

The Committee believes that the proposed arrangement constitutes no substantive conflict of interest with the duties and obligations imposed by the Senator-elect's service as a Member of the United States Senate. The Committee makes this statement, however, with the express understanding that the Senator-elect will serve for the limited period stated; that any information he may provide to the new chairman of the corporation will be limited exclusively to a discussion of matters which occurred in the past but which may be within the sole knowledge of the Senator-elect; and that such service be uncompensated.

D. Exercise of Stock Options

The Committee believes that during the period of the Senator-elect's service as a transition advisor he could exercise stock options previously granted him by the company but which, absent such service as a transition advisor, would otherwise be lost to him, if such service as a transition advisor is consistent with the conditions set forth in (C) above, and if no stock options are exercised by the Senator-elect which were not already granted prior to his announcement and filing as a candidate for the United States Senate.

While it is the understanding of the Committee that the company will disclose all of these transactions to the extent required by various federal and state laws, the Senater-elect has numerous reporting requirements under the Standing Rules of the Senate and Title I of the Ethics in Government Act of 1978 with which he must comply.

In addition, the Committee notes that it is important not only that substantive conflicts of interest be avoided, but also that there be no appearance of a conflict of interest. In this regard, paragraphs 1 and 4 of Rule 37, dealing with conflicts of interest, require that a Member in no way improperly use his official position or exercise influence in a manner which would result in personal financial gain. In addition, paragraph 2 of Rule 37 requires that no Member engage in any outside business or professional activity which is inconsistent or in conflict with the conscientious performance of his official duties. We believe that the avoidance of the appearance of impropriety is especially important with regard to the legislative and oversight responsibilities of the Committees on which the Senator-elect serves after taking the oath of office.

Ruling:

A. Retirement Bonus

A corporation's awarding of a retirement bonus to a former executive upon his election to the Senate would be permissible if done in compliance with the express conditions discussed below.

B. Covenant Not-To-Compete

A Senator-elect could enter into a covenant not-to-compete with his former employer, for which he could be compensated.

C. Service as "Transition Advisor"

Service by the Senator-elect as transition advisory to his former employer would be permissible if done in compliance with the express conditions discussed below.

D. Exercise of Stock Options

The Senator-elect could exercise all stock options granted him prior to his announcement and filing as a candidate for the United States Senate.

INTERPRETATIVE RULING NO. 359

Date issued: January 3, 1983

Applicable Rules: 34 and 37

Question considered:

Does the Senate Code of Official Conduct prohibit a Senator from serving as the compensated General Chairman of a national political party committee?

Facts:

A Senator has been requested to serve as a General Party Chairman, a position which would include the following duties: to formulate and articulate the goals and policies of the party; to provide advice and guidance to the party's National Committee and to its other officers and staff; and to coordinate the activities of the party's National Committee with those of the party's Senatorial Committee, the Congressional Committee, and any committee or committees organized to secure the election of the party's candidates for the Presidency or Vice Presidency of the United States.

Discussion:

While the Committee found that no provision of the Code of Conduct specifically addressed the questions raised by the ruling request, it concluded that two provisions must be considered.

Paragraph 2 of Rule 37 (Conflict of Interest) provides a general admonition against engaging in non-Senate activities which interfere with the conscientious performance of Senate duties. While the Committee will customarily offer its comments when asked, it has been the Committee's policy to place upon the Member primary responsibility for determining whether the activity he intends to engage in presents a conflict of interest and to caution him that he has an on-going responsibility to avoid conflicts of interest and the appearance thereof. Thus, while the Committee found that no inherent conflicts of interest appeared to be raised by the Senator's service as General Chairman, the Senator would nonetheless want to remain sensitive to the possibility that some conflict might arise and, if that should occur, to take appropriate action.

As to the acceptance of compensation for services rendered as General Chairman, paragraph 5 of Rule 37 provides: "No Member, officer, or employee of the Senate compensated at a rate in excess of $25,000 per annum and employed for more than ninety days in a calendar year shall (a) affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation; (b) permit that individual's name to be used by such a firm, partnership, association, or corporation; or (c) practice a profession for compensation to any extent during regular office hours of the Senate office in which employed. For the purposes of this paragraph, 'professional services' shall include, but not be limited to, those which involve a fiduciary relationship."

The type of services that the drafters of the Code of Conduct intended to prohibit were those of a professional nature, involving a fiduciary duty to outside commercial or business organizations, which on their face were likely to present conflicts between Senate duties and outside responsibilities. The Committee therefore concluded that this provision was not intended to be applicable to services provided as General Chairman of a political party.

Ruling:

The Committee held that the Code of Official Conduct does not prohibit a Senator from serving as General Chairman or receiving reasonable compensation commensurate with the services rendered to the party. Additionally, the Committee concluded that Senate Rule 34 (Title I of the Ethics in Government Act of 1978, as amended) requires the Senator to make an annual disclosure of the receipt of outside income aggregating $100 or more from any one source during a calendar year, and reimbursements to cover travel and related expenses and aggregating $250 or more from any one source during a calendar year.

INTERPRETATIVE RULING NO. 360

Date issued: January 21, 1983

Applicable Rules: 35 and 38

Question considered:

Are there any circumstances under which a Senator could utilize a 50% discount program, offered by an airline, under the Standing Rules of the Senate, and would application of the Standing Rules to the discount differ depending upon the way in which the discount was used by the Senator?

Discussion:

Because this particular discount program is offered directly to Members of Congress and is not negotiated with GSA on behalf of the Federal government, as is the case in most airline discounts currently used by the Senate, the manner in which a Senator would use this particular discount fare would determine the application of Rule 35 ("Gifts") and 38 ("Unofficial Office Accounts"). Since GSA negotiated discounts are used by Senators exclusively for *official* travel and the Senate *reimburses* Senators for air travel which utilizes GSA negotiated fares, the amount of the discount on an individual fare is neither a "gift" to the Senator nor an in-kind contribution to defray an official but unreimbursed expense of the Senator's office, which is prohibited by Rule 38.

Since this particular discount is offered directly to Senators and is not subject to the requirement that it only be used for official travel (as is the case with GSA negotiated fares), a Senator could use this discount in one of three ways, each of the ways resulting in a differing application of Rules 35 and 38.

(A) Should a Senator choose to use the discount offered by the airline for purely personal travel, the amount of the discount would be deemed to be a "gift" to the Senator (this particular airline not being an entity which has a direct interest in legislation as defined in Rule 35) and the value of the discount would be reported on the Senator's disclosure statement if it were in excess of $250 in a year.

(B) Should the Senator use this discount for official travel, and assuming that he had funds remaining in his Official Office Expense Account, the Senate would pay for the airfare billed to the Senator by the airline and the discount given by the airline would not be a "gift" to the Senator nor would it be a prohibited office account contribution, because the Senate would be reimbursing the Senator for the airfare billed.

(C) However, if the Senator chose to use the discount for official travel after he had exhausted the funds available to him through the Official Office Expense Account, the Senate would not reimburse him for the airfare billed to him by the airline, and while, pursuant to Rule 38, the Senator could use his own personal funds or excess campaign funds to pay for the airfare billed, the amount of the discount offered by the airline on the ticket price would be viewed as a contribution to offset an official but *unreimbursed* office expense, a contribution which the Senator could not accept under Rule 38.

Ruling:

The answer to this question would depend upon several variables, i.e., is the airline a "prohibited source" (as defined in paragraph 1(b) of Rule 35); is the Senator using the discount for personal or official travel; and, where the travel will be official, does the Senator have funds remaining in his or her Official Office Account at the time the discount is used? These variables determine whether the discount can be used, as consistent with Senate Rules and such uses discussed above.

INTERPRETATIVE RULING No. 361

Date issued: January 31, 1983

Applicable Rule: 38

Question considered:

What are the requirements imposed by Senate rules regarding the handling of registration fees for conferences or seminars sponsored by Members?

Discussion:

Rule 38 prohibits unofficial office accounts and confines the use of those funds which may be used to defray expenses incurred in connection with a Member's official duties to these sources: personal funds of a Member; official funds appropriated for that purpose; funds derived from a Member's principal campaign committee; and funds received as reasonable reimbursements for expenses incurred by a Member in connection with personal services provided by the Member to the organization making the reimbursement.

The Committee concluded that in situations in which registration fees are necessary to defray conference expenses, with respect to the collection and distribution of such fees, Rule 38 requires joint sponsorship of such programs and that a sponsor other than the Senator handle the collection and distribution of such funds. Where circumstances result in a surplus of funds after the conference has been held and all expenses thereof have been met, the Committee held that surplus funds should either be returned to conference participants on a pro-rata basis, or donated to charity.

Ruling:

Such conferences or seminars must be jointly sponsored; a sponsor other than a Senator must handle registration fees; and any surplus funds should either be returned to conference participants on a pro-rata basis, or donated to charity.

INTERPRETATIVE RULING No. 362

Date issued: January 31, 1983

Applicable Rules: 38 and 40

Question considered:

May a Member accept reimbursement from licensed broadcasters for the cost of recording, in the Senate Recording Studio, a monthly television program which is to be aired on stations owned by the broadcasters?

Discussion:

Paragraph 6 of Senate Rule 40 provides:

> (a) The radio and television studios provided by the Senate or by the House of Representatives may not be used by a Sena-

> tor or an individual who is a candidate for nomination for election, or election, to the Senate less than sixty days immediately before the date of any primary or general election (whether regular, special or runoff) in which the Senator is a candidate for public office or that individual is a candidate for Senator.
>
> (b) This paragraph shall not apply if the facilities are to be used at the request of, and at the expense of, a licensed broadcast organization or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

The Committee concluded that the permission expressed in subparagraph (b) extends to periods other than those immediately prior to an election and authorizes the acceptance of reimbursements from licensed broadcasters for use of the Senate Recording Studio to record programs that the broadcasters present.

Although Senate Rule 38 prohibits accepting contributions to defray official expenses, the Committee concluded that, since language in Rule 40 specifically addresses the use of the Senate Recording Studio, Rule 40 should decide the question.

Ruling:

Members may accept reimbursement from broadcasters under these circumstances.

INTERPRETATIVE RULING NO. 363

Date issued: March 4, 1983

Applicable Area: Franking

Question considered:

May a Senator affix to franked envelopes decorative stamps promoting his home State, its products and industries?

Facts:

The Senator requesting the ruling received a letter from the governor of his State asking that he participate in the promotional stamp program. The program had been started by a private businessman and was being supported by the State government which was encouraging State agencies and public officials, as well as private businesses and citizens, to attach the stamps to their correspondence.

Discussion:

The privilege of sending official mail in envelopes bearing a Senator's signature (frank) rather than a postage stamp is granted by statute in 39 U.S.C. Sections 3210 *et seq.*

Section 3210 provides: "It is the policy of the Congress that the privilege of sending mail as franked mail shall be established . . . in order to assist and expedite the conduct of the official business, activities, and duties of the Congress. . . ."

Section 3215 prohibits the use of the frank by or for the benefit of non-Senate groups or organizations.

The Committee concluded that, while the stamps supported a worthwhile cause, they should not be used on franked mail. Endorsing their use would make it impossible for the Committee to refuse to allow the attachment of other stamps for promoting other worthy causes and groups.

Ruling:

The Committee held that 39 U.S.C. 3215, which prohibits Senators from allowing non-Senate organizations to use the franking privilege, would preclude placing the stamps on franked envelopes.

INTERPRETATIVE RULING NO. 364

Date issued: March 10, 1983

Applicable Area: Franking

Question considered:

If a retiring Member of the Senate were to send a franked questionnaire on a legislative issue and provide that responses to the questionnaire could be returned to his Senate office under the franked mail privilege, would the franked responses, which might be returned after the Senator had left office, become the property of the former Senator or would they remain the property of the Senate? [50]

Discussion:

A Senator is authorized, under section 3210(a)(3)(c) of the franked mail statute, to send a questionnaire which seeks public opinion "on any law, pending or proposed legislation, public issue or subject", and responses to such a questionnaire may be returned to the Senator by the constituent under the Senator's frank. There could be an occasion where a Senator, who is near to the date of his retirement, might find it appropriate to send such a questionnaire and provide for the responses to be returned to his Senate office. If the Senator left the Senate after the questionnaire had been mailed, but before the responses were returned, the responses would become the property of the Senate, rather than the personal property of the former Senator. The Committee ruled that responses to a questionnaire which were returned under a Senator's frank but after the Senator had retired, would become the property of the Senate and would be held for official use by another Senator or Senate Committee which might be interested in the results of the questionnaire.

Ruling:

Responses to franked questionnaires, which are to be returned to the Senate under the franking privilege of the Senator who mailed the questionnaries, become the property of the Senate in the instance where the Senator retires from the Senate before the franked responses are returned.

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[50] Following the publication of this Interpretative Ruling, the Senate Committee on Rules and Administration published regulations limiting the circumstances in which questionnaires could be returned under the frank to Senators.

INTERPRETATIVE RULING NO. 365

Date issued: March 21, 1983

Applicable Rule and Areas: 37, Franking, Code of Official Conduct (40 USC 193(d))

Question considered:

Are there any Senate Rules or Federal statutes which would limit the ability of a Senator to chair and actively participate in a fund-raising effort, within the Senate using Senate facilities and employees, on behalf of a national, non-profit, tax-exempt charitable organization?

Facts:

A Senator was asked by a national, non-profit, charitable organization to lead a fund-raising drive for the organization within the Senate. As proposed, the Senator would solicit Members, officers, and employees of the Senate, host luncheons in Senate facilities to solicit contributions and use his Senate letterhead and the "Inside Mail" system to notify the Senate of the fund-raising effort and invite participation and contributions. The Senator proposed that he would also make use of the volunteer services of his staff, or other Senate employees, during normal Senate working hours.

Discussion:

Charitable solicitations of Federal employees in the work place are generally regulated by Executive Orders of the President. In an effort to combine all of the various charitable solicitations which Federal employees had been exposed to in the work place, President Kennedy issued an Executive Order in 1962 which established the Combined Federal Campaign as the sole charitable solicitation of Federal employees. The purpose and intent behind the recognition of a single charitable solicitation each year been adopted by each successive President. The Office of Personnel Management, which has been directed by the President to administer the CFC, has published regulations which direct that the charitable organizations which participate in the CFC limit their solicitation of Federal employees at the work place to a single, yearly solicitation through the auspices of the CFC. In this instance, the charitable organization, which was the subject of the Senator's inquiry, had been a participant in the CFC for the preceding year.

The Congress has recognized the merit of a single, annual combined charitable solicitation of Members and employees of the Congress in the work place, by inviting the CFC to solicit the Congress and to utilize Congressional staff and pay mechanisms for that purpose (S. Res. 12, adopted by the Senate on September 14, 1977). While the Congress is not bound by the regulations promulgated by OPM with respect to the CFC, the Select Committee concluded that the underlying principles set forth in such regulations should be followed with respect to the charitable solicitation of Members and employees of the Senate. In addition, the Committee was apprised that Federal law, 40 USC 193(d), seeks to restrict charitable solicitations on the grounds of the Capitol.

For these reasons, and because the Committee agreed with the underlying principle that there should only be a single, annual charitable solicitation within Congress, the Committee made clear that its recommendation did not extend to the Senator's participation in a charitable solicitation outside the Senate. The Committee believes that a Senator could sponsor fund-raising events at other than Senate facilities and conceivably could, under policies adopted by the Committee on Rules and Administration, utilize Capitol rooms or Senate office building rooms under the Committee's jurisdiction, to sponsor luncheons and announce that a charitable organization was soliciting funds, etc., while making sure that no actual solicitation took place at the Senate facility. Similarly, a Senator could make use of the volunteer services of Senate employees, acting on their own leave or evening or weekend time, to assist in fund-raising events which might be held off of Capitol Hill. Such staff participation would not violate any rule of the Code of Official Conduct, provided that, pursuant to Rule 37.3, the employee's supervisor was notified and approved of the employee's participation.

The Committee also stated that under the Committee's Advisory Opinion of August 14, 1978, on the use of Senate letterhead, a Senator could use Senate letterhead to notify the Senator's colleagues of the fact that a particular charitable solicitation was in progress or to invite them to fund-raising events which the Senator might host off of Capitol Hill. These informational letters or invitations to events could be sent through the "Inside Mail" system of the Senate Post Office, should the Senator deem the mailings to be within the scope of the official, representational duties of the Senator.

Ruling:

For reasons involving the policy behind the Federal government's Combined Federal Campaign and because of the restrictions imposed by 40 USC 193(d), the Committee recommends that a Senator not become involved in a charitable solicitation within the Senate. Such a recommendation would not apply to a Senator's participation in such a solicitation which was undertaken outside of Capitol Hill.

INTERPRETATIVE RULING NO. 366

Date issued: March 16, 1983

Applicable Rule and Area: 40 and Franking

Question considered:

Is the 60-day moratorium on the use of the frank violated when a Senator sends a mass mailing under the frank within 60 days of his State party's nomination convention, if the convention may "designate" a candidate for the party's nomination although the nomination may still be contested in a subsequent primary?

Facts:

Ethics Committee regulations provide that an election to which the 60-day moratorium on the use of the frank for mass mailings is applicable includes a party convention or caucus which has authority to nominate a candidate for the Senate.

A Senator's home State's election law provides that the party's State convention could "designate" an individual for the party's Senatorial nomination. The individual so "designated" could nonetheless be challenged in the primary following the State convention. In the case presented for the Committee's consideration, another candidate gained access to the primary ballot and challenged the incumbent who had been "designated" for nomination by the State convention.

During the 60-day period before the convention, but not during the 60 days before the primary, the Senator used the frank to send through the mail several newsletters which were mass mailings as defined at title 39 United States Codes section 3210(a)(5)(D). The Senator's primary challenger complained to the Ethics Committee that the use of the frank for mass mailings during the 60 days before the party's convention was improper.

Ruling:

The Committee held that the use of the frank for mass mailings within 60 days of the party's convention was not a violation of the moratorium requirements because under the State's law the convention did not have the "authority to nominate" the party's candidate for the Senate, but merely the authority to name a candidate as the "party's designated candidate for nomination".

INTERPRETATIVE RULING NO. 367

Date issued: April 11, 1983

Applicable Rule and Area: 37, Dual Compensation Act

Question considered:

May a Senate employee enter into a research contract with the Library of Congress to write a report for which he will receive a $10,000 fee?

Facts:

A Committee Chairman asked whether an employee on the Senator's Committee staff could write a report for the Library of Congress and receive a fee for the project. The Committee was advised that the proposed research project would not present a substantive conflict of interest with the employee's performance of official duties because the project would be done on non-Senate time and with non-Senate resources; and that the Chairman had approved the employee's proposed activity.

Ruling:

The Committee held that neither the Senate Code of Conduct nor the Dual Compensation Act (5 U.S.C. 5533) prohibited the proposed activity. It noted, however, that certain "appearance" questions could be presented. It noted that it is the policy of the Federal Government generally, as expressed in an opinion of the Comptroller General (B-148092, 41 C.G. 569), to approve the practice of permitting Federal employees to contract with the Federal Government "only in those exceptional cases where the needs of the Government cannot reasonably be otherwise supplied". The basis for this public policy is the desire to avoid "favoritism and preferential treatment". Likewise, the regulations of the Library of Congress (LOC Reg. 1514-3) permit contracting with a Federal employee as a consultant or expert only if such employee is "uniquely qualified" and is the "sole source" of such expertise. The Committee noted it had been advised that the Library of Congress had concluded that the Senate employee did possess "sole source" expertise for purposes of the proposed study.

INTERPRETATIVE RULING NO. 368

Date issued: April 18, 1983

Applicable Rule: 37

Question considered:

May a corporation supplement the salary of a Senate Committee employee when the employee was formerly employed by the corporation and expects to be reemployed by the corporation following his Senate service, and when the corporation is actively engaged in the field in which the Senate employee's duties fall?

Facts:

A Committee Chairman, noting the unfavorable disparity between the official salary received by a Senate employee of high technical expertise and the compensation earned by the employee in private industry, asked if the employee's previous and likely future employer could provide a monetary bonus to the employee.

Ruling:

The Committee held that it would be difficult for any Senate employee to deal in an arms-length manner with his former and future employer under the circumstances presented. The Committee also pointed out that were the practice as proposed being contemplated for an individual employed in the Executive Branch, such a practice would be expressly prohibited by 18 U.S.C. section 209(a), unless such contributions to the employee were made pursuant to a "bona fide" retirement plan maintained by the former employee covering a relatively broad class of employees, and in a manner not affording the Federal employee participant special treatment thereunder. Although 18 U.S.C. 209(a) is not applicable to the Legislative Branch, the Committee concluded that the principle underlying that provision should be observed within the Senate.

INTERPRETATIVE RULING NO. 369

Date issued: April 21, 1983

Applicable Rule: 37

Question considered:

Would either an actual conflict or the appearance of a conflict of interest arise if a retired Senate committee counsel was reemployed by that committee for a limited purpose, while, at the same time, the attorney undertook an individual legal practice which would include the representation of clients with interests pending before Congress? Where does the responsibility rest for monitoring this individual's activities to ensure that no actual or apparent conflict would arise in the future?

Facts:

A former employee of a Senate Committee, who had retired from the Committee, would be reemployed, at a nominal sum, by a subcommittee of the full Committee as its "Special Counsel" with responsibilities for specified legislative issues. Because the employee would only serve the subcommittee on a part-time basis, he would simultaneously develop an individual legal practice with the expectation that he would represent clients before other committees of Congress on all matters except those which he would have responsibility for as "Special Counsel" to the subcommittee, advise and counsel such clients on matters of interest to them which might be before the Committee for which he worked, and lobby various committees and Members of Congress other than the Committee for which he worked.

Discussion:

The Ethics Committee was of the opinion that several paragraphs of Rule 37, "Conflicts of Interest", were applicable to this proposal. Thus, paragraph one of the rule would prohibit the employee from receiving any compensation from any of his clients where that compensation could be seen to have been received by virtue of the exertion of any improper influence from the employee's continuing employment relationship with the Senate and the Committee which employed him. As the report of the Special Committee which drafted the rules of the "Code of Official Conduct" (Sen. Report 95–49) makes clear, this provision was intended by that Committee to be read as a "broad prohibition against . . . employees deriving financial benefit, directly or indirectly, from the use of their official position."

Paragraph 2 of Rule 37 prohibits a Senate employee from engaging in any outside business or professional activity for compensation where such activity is inconsistent or in conflict with the employee's performance of official duties. Senate Report 95–49 indicates that this provision should be read to prohibit "any outside activities which could represent a conflict of interest or the appearance of a conflict of interest."

Under paragraph 3 of Rule 37, whenever a "Senate employee" (as this individual would be in the instance where his pay as "Special Counsel" would be disbursed by the Senate), seeks to engage in any outside business or professional activity for compensation, the threshold responsibility for determining whether the proposed activity poses either an actual or the appearance of a conflict of interest with the employee's duties to the Senate, rests upon his supervisor, in this case, the Chairman of the employing subcommittee. After that determination is made, and in the instance where the employee is permitted to proceed with the proposed activity, the supervisor has a continuing obligation to closely monitor the outside activity to be sure that no actual or apparent conflict arises in the future.

Because of the unique circumstances surrounding this proposal, and because the proposal had a strong potential for developing either an actual conflict or the appearance of a conflict, and because the threshold responsibility for monitoring such proposed professional activity falls on an employee's supervisor under Rule 37.3, the Committee ruled that it could neither substitute its judgment for that of the employee's supervisor, nor was it in a position to monitor or review the clients which the employee might choose to represent. While the Committee did not pass judgment on the propriety of the proposed action, it did conclude that if the employee's relationship with his clients is properly supervised and the employee conducts himself within the bounds of the Senate Rules, such an employment agreement would not be inconsistent with the Senate Rules.

However, because such an arrangement as that proposed is fraught with potential for a conflict between the employee's obligations to the Senate and his duties to his legal clients, the Committee warned that a supervisor would have a substantial obligation with respect to approving and monitoring the activities of an individual who simultaneously sought to represent private, public, and governmental clients in matters pending before the Congress, and to counsel such clients on the business and activities of a Senate committee while that individual was, at the same time, an employee of the Senate and that particular Senate committee. Similarly, the Committee was of the firm opinion that should this proposed activity proceed, the employee would be under an obligation to strictly observe the requirements of paragraph 2 of Rule 37 and carefully select his potential clients so as not to allow himself to be placed in a position where it could be said that his fiduciary duties to the Senate and to his clients were divided or in conflict. In an effort to limit the potential for the appearance of a conflict of interest, the Committee ruled that the employee could not conduct any actual business activities on behalf of any of his clients while on the premises of the Senate or in the Capitol.

Ruling

Under very limited circumstances, as set forth below, it might be possible to undertake this proposed activity if the employee's Senate supervisor carefully and conscientiously undertook to fulfill the obligations established by Rule 37.

INTERPRETATIVE RULING NO. 370

Date issued: May 13, 1983

Applicable Rule: 37

Question considered:

May a Member establish and operate a charitable, tax-exempt public foundation?

Facts:

A Member proposes to establish and operate a tax-exempt public foundation in accordance with the Internal Revenue Code of 1954. The purpose of the foundation is to aid in the education, job training, and job placement of handicapped citizens; to sponsor public policy forums; and to benefit other charitable organizations.

Funds for the foundation would be obtained by one or more of the following means: One or more fund-raising receptions or events to be held annually; direct mail solicitations; the donation by the Member of honoraria received for personal speaking engagements; and fund-raising receptions to be held immediately before or after personal speaking engagements by the Member. No Senate personnel, stationery, and the like would be used in such fund-raising events.

Discussion:

With the caveats expressed below, there is nothing in Senate Rules which would prohibit the establishment and operation of the foundation as outlined. Paragraph 6 of Rule 37 (Conflict of Interest) expressly permits a Member to serve as an officer or director of a tax-exempt organization or foundation, provided, however, that such service is uncompensated. Receipt of reimbursements for necessary travel expenses would also be permitted, although such reimbursements must be disclosed as required by Title I of the Ethics in Government Act of 1978.

The establishment of the foundation is consistent with Senate Rules provided there is no substantive conflict of interest between the activities of the foundation and the official duties of a Member of the Senate. There could be, however, appearance problems were the public policy forums sponsored by the Foundation not confined to issues affecting or of concern to handicapped individuals, or should the public policy forums be viewed in any way as related to the promotion or advancement of other legislative concerns of interest to the Member.

A Member will want to exercise care so that no appearance of a conflict of interest arises with regard to any Foundation fund-raising activities which would be held in conjunction with (either preceding or following) personal speaking engagements. Given the position of a Member of the Senate, it is possible that certain individuals would suggest that a Member might require, as some *quid pro quo* for an appearance (whether related to official duties or not), a donation to the Foundation. The Committee recommends that the Member take such precautions as are necessary to prevent that inference from being drawn.

While it is the stated intention that no Senate personnel, stationery, or the like would be used in any fund-raising efforts for the foundation, the Committee believes that inasmuch as the activities of the Foundation would constitute non-Senate business, no Senate personnel, stationery, or the like could be used in connection with *any* activities of the Foundation, fund-raising or otherwise. Senate staff, of course, would not be prohibited from work on behalf of the Foundation undertaken on non-Senate time.

Ruling:

Within certain limitations, a Member may establish and operate such a foundation.

INTERPRETATIVE RULING NO. 371

Date issued: May 26, 1983

Applicable Area: Franking

Question considered:

Is it appropriate for a Member of the Senate to utilize the franked mail privilege to send a meeting notice to constituents where the notice of the meeting indicates that the host of the forum will be a local affiliate of a national political party?

Facts:

A Senator has been invited to address a public meeting in the Senator's home State on general topics of a public policy nature. The meeting will be open to all interested parties but will be hosted by a local group which is affiliated with a national political party organization. The Senator would like to send a large number of notices about the meeting to residents in the area and intends to include a statement identifying the meeting host. These notices will be sent under the Senator's franked mail privilege.

Discussion:

In discussing this issue, the Committee reaffirmed that it is both appropriate and desirable for Members of the Senate to meet with constituents to discuss pending legislation and receive the benefit of their views, and that the use of franked mail is an appropriate means by which to communicate with one's constituents. That notwithstanding, the Committee has also concluded that a Senator must take steps to ensure that those receiving his or her franked mail have no legitimate basis for concluding that the frank—and taxpayer dollars—are being used for political purposes. While the mailing in question minimally meets this test, the Committee was also of the opinion that the recipient of the mailing might be justified in drawing the inference that an otherwise official and appropriate event appeared to be a political meeting, because of the identity of the host under whose auspices the meeting was to be held.

Ruling:

While the franked mail privilege may be utilized to send notices of public meetings to constituents, a Senator has a responsibility to ensure that such mailings are carefully and clearly worded to reflect their non-partisan, non-political nature.

INTERPRETATIVE RULING NO. 372

Date issued: May 26, 1983

Applicable Area: Franking

Question considered:

May state road maps, travel literature, and brochures relating to communities within a Member's State be sent under the frank if requested by a constituent?

Ruling:

The franked mail statute, at section 3210(a)(3)(A), authorizes the franking of mail matter, "regarding programs, decisions, and other related matters of public concern or public service . . ." and the *Regulations Governing the Use of the Mailing Frank* provide that "these matters must relate principally to the Federal Government." Assuming that the road maps convey information on Federal highways, they may be sent under the frank, pursuant to 39 U.S.C. 3210(a)(3)(A).

Travel literature and brochures may not be sent under the frank if they do not relate in some way to Federal programs or responsibilities. However, if a constituent asks the Member to provide such unfrankable material, the frank may be used to advise the constituent that such material may not be sent under the frank, and, if the material is available from any State or local agency or private organization, to whom the constituent should write.

INTERPRETATIVE RULING NO. 373

Date issued: August 2, 1983

Applicable Rule: 35

Question considered:

Is the "necessary expense" exception to the definition of a "gift", as found in paragraph 2 of Standing Rule 35 and previously determined by the Committee to be applicable to Members, officers, and employees of the Senate and to the spouses of Senators, also applicable to the spouses of Senate employees?

Facts:

The sponsor of a fact-finding trip to a medical laboratory facility proposes to offer a Senate employee and his spouse overnight lodging, transportation and food expenses in connection with the employee's tour of the facility and discussions with officials from the sponsoring corporation.

Discussion:

Rule 35 ("Gifts") of the Standing Rules of the Senate applies to Members, officers, and employees of the Senate, and to their spouses and dependents as well. The Rule prohibits the acceptance of a "gift" valued at over $100 in a calendar year by such an individual from, among others, entities which either are or which have retained lobbyists registered under the 1946 Federal Regulation of Lobbying Act; entities which maintain a political committee registered with the Federal Election Commission; or foreign nationals. Paragraph 2 of Rule 35 defines the term "gift" to include "other than necessary expenses" and the Committee, in many Interpretative Rulings, including Nos. 212, 214 and 217, has ruled that the term "gift" does not include the payment of the limited "necessary expenses" of travel paid by the sponsor of an appearance, including "fact-finding", on behalf of a Member, officer, or employee of the Senate, where the appearance is made in connection with the individual's official duties to the Senate.

While the Committee has ruled that such an interpretation extends to the "necessary expenses" of a Senator's spouse when the spouse is making an appearance in connection with the Senator's official duties, the Committee has not previously been asked to extend the interpretation to the "necessary expenses" of travel offered to the spouse of an officer or employee of the Senate. However, just as the spouse of a Senator quite clearly performs many official and quasi-official duties and functions in connection with or in place of the Senator, the Committee believes that the spouse of a Senate employee may have official duties or functions as the result of his or her marriage partner's employment with the Senate.[51] Therefore, we believe that the acceptance of the "necessary expenses" of travel by a Senate employee and his or her spouse, within the confines of Interpretative Ruling Nos. 212, 214, and 217, would not be deemed to be a "gift" to that employee or the spouse under Rule 35, provided that the spouse of the employee performed some form of service on behalf of the sponsor of the appearance. Just as the spouse of a Member of the Senate is required, by the terms of the "necessary expense" exception to the definition of a "gift" in paragraph two of Rule 35, to make an appearance or perform a service for the sponsor who proposes to provide the spouse's travel expenses, so too does the spouse of an employee have to make some form of an appearance on behalf of the sponsor. The lack of a sufficient appearance by the spouse might be viewed as an indication that the travel expenses offered by the sponsor were actually a "gift" to the spouse and thus within the parameters of paragraph one of Rule 35.

Ruling:

Under conditions set forth by the Committee in Interpretative Ruling Nos. 212, 214, and 217, the spouse of a Senate employee, who is accompanying that employee to an appearance in connection with the employee's Senate duties, may accept the "necessary expenses" of travel from the sponsor of the employee's appearance.

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[51] Such "official duties or functions" by the spouse of a Senate employee are confined to the application of Rule 35 and do not establish a precedent for the application of any other rule, regulation, or statute.

INTERPRETATIVE RULING NO. 374

Date issued: October 11, 1983

Applicable Rule and Area: 34 and Outside Earned Income

Question considered:

Does any Federal statute or rule of the Senate preclude a Senator from accepting an honorarium for a speech on a public policy issue from a sponsor which has an interest in legislation currently pending before Congress?

Facts:

A Senator has been invited to address a group on a specific topic which is of interest to both the Senator and to the group to whom the Senator will be speaking. The group before whom the Senator will appear has a direct interest in legislation which is then pending before Congress.

Ruling:

The practice of a Member of the Senate in accepting an honorarium for a speech made before a group which has a direct interest in legislation pending before Congress is not precluded by Senate rules, nor does such a practice run afoul of the Federal laws and regulations which govern receipt of honoraria by government officials. Specifically, they are within the definitions of "appearance" and "speech", for which honoraria may permissibly be received, as those terms are defined in the Regulations of the Federal Election Commission (11 Code of Federal Regulations, section 110.12).

The Committee believes it to be a matter within the judgment of each Member of the Senate as to what groups he or she chooses to address, and whether he or she accepts an honorarium for such a speech or appearance. However, Federal law limits each honorarium to $2,000 per speech or appearance, and Members of the Senate are required by Senate Rule 34 (Title I of the Ethics in Government Act of 1978, as amended) to make an annual public disclosure of all honoraria received from any source aggregating $100 or more in value in a calendar year. Copies of these disclosure statements are available for public inspection in the Secretary of the Senate's Office of Public Records.

INTERPRETATIVE RULING NO. 375

Date issued: October 31, 1983

Applicable Rule: 37

Question considered:

Are there any Senate Rules or other considerations which would impact upon a proposal by a Senator to establish and serve as the Chairman of a state-chartered charitable organization? What role may be undertaken by the staff of the Senator in the operation of the corporation?

Facts:

A Senator, who had an established interest in private-sector solutions to drug-abuse problems, was approached by several constituents who proposed to create a private, state-chartered charitable organization which would raise and expend private contributions in an effort to address drug-abuse problems. As proposed, the Senator would be a founder of the organization and serve as its first Chairman of the Board of Trustees. Once the organization received its charter, the Senator proposed to allow his staff to voluntarily participate in the operation of the organization. Participation by his staff would be on their own time, not during Senate office hours, and would not require the use of Senate facilities or equipment. The founders proposed that the organization be named "The Senatorial Committee Against Narcotics".

Discussion:

Participation by Members of the Senate as members of the board of a charitable entity is authorized by Senate Rule 37.6(a); similarly, all outside business or professional activity by Senate employees is regulated by Senate Rule 37.3. Assuming that the specifics of these two provisions are followed, participation by a Senator or his staff in the work of a charitable organization, as outlined above, would not raise an issue under the Senate Code of Official Conduct.

With respect to the choice of a name for the corporation, it was the view of the Select Committee that a name should be selected so as to minimize the potential for confusion between the activities of the corporation and the official functions of the United States Senate. Because of the participation by a Member of the Senate and the proposed active involvement by his staff, the Select Committee was of the opinion that there would be the potential for confusion if the corporation's name was adopted as proposed. Because the Senator made clear that such confusion was a concern, the Committee agreed with him that any potential for confusion in the mind of the public must be avoided.

Ruling:

While no Rule of the Senate bars a Member or employee of the Senate from assisting in the creation and direction of a charitable organization (such activity being regulated by Senate Rule 37, paragraphs three and six), because of the active participation by a Senator and his staff, care should be exercised in the choice of a name for such an organization.

INTERPRETATIVE RULING NO. 376

Date issued: May 24, 1984

Applicable Area: Honoraria Limitation

Question considered:

How may a Member comply with the 30 percent limit on honoraria by donating honoraria to charity? [52]

Facts and discussion:

The key provisions of the 30 percent limitation on Members' acceptance of honoraria are contained in subsections (b)(1) and (c) of section 908 of PL 98–63, and are as follows:

(b)(1) Notwithstanding any other provision of law . . . a Member shall not accept honoraria which are attributable to any calendar year and total more than the amount that is equal to 30 percent of the aggregate salary paid to such Member for service as a Member during such calendar year.

(c) Any honorarium, or any part thereof, paid by or on behalf of a Member to a charitable organization shall be deemed not to be accepted for the purpose of subsection (b).

Questions and answers on these provisions are:

1. Question: May a Member receive an honorarium check made payable to him and endorse that check to charity?

Answer: A Member who receives payment for a speech, appearance, or article in the form of a check payable to him, and who endorses that check to a charity, would not have "accepted" that check under the terms of subsection (c). Endorsing the check to a charity falls within the language, "Any honorarium . . . paid by . . . a Member to a charitable organization shall be deemed not to be accepted for the purposes of (the 30 percent limitation on honoraria)." Thus, a Member who has reached his 30 percent limit has not breached the limit by endorsing an honorarium check over to charity, and a Member who has not reached his 30 percent limit has not accepted an honorarium which counts toward the limit if he endorses an honorarium check to a charity.

2. Question: May a Member receive an honorarium check made payable to him, deposit it to his account, draw a check on his account in the amount of the honorarium and send it to charity?

Answer: We believe that a Member who deposits an honorarium check to his account, and who draws a check on his account in the amount of the honorarium and sends it to charity is within the exception provided by subsection (c). In this case, as in question 1, above, the honorarium is paid by the Member to a charitable organization and he is therefore deemed not to have accepted the honorarium. If this procedure is followed, the honorarium would not count toward the 30 percent limit established by subsection (b).

3. Question: May a Member receive an honorarium check made payable to him, deposit it to his account, draw on this account sev-

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[52] The current limitation on honoraria is 40 percent of the Senator's base salary. This limitation became effective January 1, 1986 and is a result of an amendment to the Supplemental Appropriations Act for Fiscal Year 1983, which became Public Law 99-190, agreed to December 19, 1985.

eral checks to different charities with the total amount equaling the honorarium?

Answer: A Member who deposits an honorarium check to his account, and who draws several checks on his account to different charities, with the total amount equaling the honorarium, is within the exception provided by section (c). This case is similar to question 2, above, with the single distinction that the honorarium is sent to several charities instead of to a single charity. Notwithstanding this distinction, we believe that the Member is deemed not to have accepted the honorarium. In this case, we believe that if this procedure is followed the honorarium would not count toward the 30 percent limit established by subsection (b).

An issue which is related to our answers to questions (2) and (3) is the payment by a Member of part of an honorarium to charity. Subsection (c) provides that if a Member pays part of an honorarium to a charitable organization, then that part which is paid to charity is not deemed to be accepted by the Member. On the facts presented by questions (2) and (3), a Member might deposit an honorarium check to his account, and draws a check or checks on his account to charity in an amount less than the honorarium check he deposited. If this is done, the honorarium the Member has accepted is the amount he deposited less the amount sent to charity. The amount accepted is applied to his 30 percent limit and the amount sent to charity is not applied to his limit.

4. Question: If the procedures described in questions (2) and (3) are permissible, how much time can elapse between the receipt of the honoraria and the mailing of the check or checks to the charities?

Answer: The statute itself, and the debate surrounding its adoption, do not provide an answer to this question. As a result, we believe that the Ethics Committee does not have the authority to impose a specific time period in which Members must send a payment to charity. Each Member, therefore, is responsible for seeing to it that a payment is sent to charity within the year of receipt in order to avoid having a payment count toward his 30 percent limit.

5. Question: Would it be satisfactory if, at the end of the year, the difference between honoraria received and cash charitable contributions made did not exceed 30 percent of one's senatorial salary?

Answer: We believe that a year-end reconciliation of honoraria received and charitable contributions made may be an adequate method to rely upon in complying with the 30 percent limitation. We believe that each Member must take whatever reasonable steps are necessary to comply with the 30 percent limitation.

Ruling:

In general, an honorarium or part of an honorarium paid by or on behalf of a Member to a charitable organization is not deemed to be accepted by the Member.

INTERPRETATIVE RULING NO. 377

Date issued: October 31, 1983

Applicable Area: Franking

Question considered:

Pursuant to the franked mail privilege, may the surviving spouse of a deceased Senator utilize a facsimile of the spouse's signature on envelopes which will be used to disseminate franked mailings from the surviving spouse? What types of mail matter may the surviving spouse of a deceased Senator send under the spouse's franked mail privilege?

Discussion:

The franked mail statute, 39 U.S.C. section 3210 et seq., at section 3218 authorizes a surviving spouse or other designated relative of a deceased Senator to utilize the franked mail privilege to send certain mail matter for a period of 180 days after the death of the Senator.

Ruling:

In response to the first question, the Committee ruled that it would be a correct interpretation of section 3218 for the surviving spouse to use franked envelopes or mailing labels bearing the spouse's own signature.

Second, the Committee ruled that it also was a correct interpretation of this section that the surviving spouse may send, under his or her own frank, correspondence responding to condolences received concerning the Senator's death; matter including files and books being sent for ultimate deposit in a repository library; matters relating to the closing of the Senator's Senate offices; and other such matter pertaining to the official business of the Senate as may be necessary and proper.

INTERPRETATIVE RULING NO. 378

Date issued: December 21, 1983

Applicable Rule: 35

Question considered:

May Members, their spouses, and staff participate in a language training program, organized and sponsored by two universities, where the program's administrative costs will be offset by donations solicited by the universities?

Facts:

Two universities are establishing a program to provide foreign language training to Members, their spouses, and Senate staff. The program will be offered for a charge to each participant of $225 per 32-hour course. While this charge reflects most of the cost of language training, the charge is not sufficient to cover some of the administrative costs of the program. The universities therefore propose to raise donations, from corporate and private sources, to cover these administrative costs.

Discussion:

Paragraph 1(a) of Senate Rule 35 provides: "No Member, officer, or employee of the Senate, or the spouse or dependent thereof, shall knowingly accept, directly or indirectly, any gift or gifts having an aggregate value exceeding $100 during a calendar year directly or indirectly from any person, organization, or corporation having a direct interest in legislation before the Congress or from any foreign national unless, in an unusual case, a waiver is granted by the Select Committee on Ethics."

In view of this prohibition, the question arises as to whether participation by Members, their spouses, and staff in the language program would give rise to their having accepted a prohibited gift to the extent that the program costs, which are above and beyond the $225 per 32-hour course tuition, are paid for by donations to the universities from sources which are prohibited under Senate Rule 35.

The Committee considered a related question regardng Rule 35 [53] when it was asked whether a college or university, which did not maintain a separate segregated fund for political purposes nor retained a registered lobbyist, was nevertheless a "prohibited source" of gifts if it was a member of one or more associations which did maintain such funds or had retained a registered lobbyist. The Committee concluded that the college or university did not become a "prohibited source" by virtue of its association memberships.

A similar conclusion is called for from the facts presented here. The universities are not themselves prohibited sources of gifts under Senate Rule 35. Furthermore, since the universities are the entities which are establishing the program and soliciting donations to defray some of its costs, any relationship between Members, their spouses, and staff on the one hand, and potential donors to the universities on the other, is too remote for the provisions of the Senate Gift Rule to be called into play. Participation by Members, their spouses, and Senate staff in the language program as described is therefore not prohibited by the Senate Code of Official Conduct.

Ruling:

Even where a potential donor to the universities is a "prohibited source" of gifts under Senate Rule 35, the relationship between Members, their spouses, and staff on the one hand, and potential donors on the other, is too remote for the provisions of the Gift Rule to apply. Members, their spouses, and staff may therefore participate in the program.

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[53] See Interpretative Ruling No. 73, dated September 29, 1977.

INTERPRETATIVE RULING NO. 379

Date issued: January 31, 1984

Applicable Rule: 38

Question considered:

May a Member and his spouse use an apartment leased by the Member's campaign committee in the Member's home State?

Facts:

A Member's principal campaign committee is planning to lease an apartment in the major city of the Member's home State. The apartment is to be used for campaign meetings and briefings, and to provide accommodations for out-of-town campaign staff and advisers. In addition, the Member and his spouse plan to use the apartment when they are in the area for campaign events or when performing Senate duties.

Discussion:

Any use of the apartment for compaign-related activities is a matter covered by the Federal Election Compaign Act and is under the jurisdiction of the Federal Election Commission. The use of a campaign-financed apartment by a Member and spouse as a result of performing Senate duties is a question addressed by Senate Rule 38. The Rule provides that a Member may defray otherwise unreimbursed expenses incurred in connection with his official duties from funds derived from his campaign committee. In view of this permission, a Member's use of the apartment under the circumstances described is consistent with the Senate Code of Official Conduct.

Ruling:

A Member and his spouse may use an apartment leased by his campaign committee when the use is in connection with his official Senate duties.

INTERPRETATIVE RULING NO. 380

Date issued: March 1, 1984

Applicable Rule: 37

Question considered:

Is it consistent with the Code of Official Conduct for a Member, officer, or employee of the Senate to enter into negotiations with prospective employers and sign a contract committing that individual to future employment, while the Member, officer, or employee remains on the Senate payroll?

Facts:

When a Member, officer, or employee of the Senate reaches the conclusion and announces a decision to leave the Senate, the possibility of future employment upon termination of his or her Senate employment becomes a matter for consideration. Where future employment is an option, questions arise as to the propriety of negotiating with prospective employers and entering into a contract for future employment, prior to the conclusion of Senate service.

Discussion:

Defining the appropriate level of activity which a Senator or Senate employee may engage in regarding a search for future employment is a difficult undertaking. On the one hand, Members and employees, like all individuals in society, have a right to search the marketplace in order to secure employment after terminating their current position. On the other hand, because of the unique nature of their responsibilities to the Senate, including the influence which they exercise over the legislative process, and because their every action is open to public scrutiny, Members and employees seeking future employment are under a substantial obligation to avoid not only an actual conflict of interest, but also the appearance of a conflict between their duties to the Senate and the interests of the prospective employers with whom they are negotiating.

With the understanding that they would be diligent in fulfilling this responsibility, the Committee has recognized, in Interpretative Ruling No. 79, October 11, 1977, that members and employees may carry out negotiations regarding terms and conditions of employment with prospective employers. While this Committee has never previously addressed the issue of the signing of a contract for future employment, we are aware that the Senate, in adopting the disclosure provision of the Ethics in Government Act, has anticipated such activity and has directed that those Senators and Senate employees who file an annual public financial disclosure statement must disclose the existence of any "agreement for future employment".

Ruling:

Neither the negotiating of terms of employment with a prospective employer nor the signing of a contract for future employment is precluded by the Code of Official Conduct and may be undertaken before a Member, officer, or employee terminates his or her Senate service.

INTERPRETATIVE RULING NO. 381

Date issued: May 4, 1984

Applicable Area: Franking

Question considered:

The franking statute (39 U.S.C. 3210 et. seq.) authorizes the franking of letters of congratulations to individuals who have achieved some "public distinction."

Is the appointment of a constituent to be the Director of a State's Museum of Natural History a "public distinction" for purposes of the Act?

Ruling:

The appointment is a "public distinction" for which the franking statute authorizes the use of the frank to convey congratulations to the designee.

INTERPRETATIVE RULING No. 382

Date issued: May 8, 1984

Applicable Area: Franking

Question considered:

The franking statute (39 U.S.C. 3210 et. seq.) authorizes the franking of letters of congratulations to individuals who have achieved some "public distinction."

Have students who have been awarded a Harry S. Truman Scholarship achieved a "public distinction" for purposes of the Act?

Facts:

The Harry S. Truman Scholarship Foundation, which has presented the scholarships, was established by Congress as the official federal memorial to honor the thirty-third President of the United States. It is a continuing educational scholarship program available to students throughout the nation and designed to provide opportunities for outstanding students to prepare for careers in public service. The purpose of the Foundation is to recognize President Truman's high regard for the public trust, his lively exercise of political talents, his broad knowledge and understanding of the American political system, and his desire to enhance educational opportunities for young people.

Ruling:

The receipt of a Harry S. Truman Scholarship is a "public distinction" for which the franking statute authorizes the use of the frank to convey congratulations to the recipient.

INTERPRETATIVE RULING No. 383

Date issued: May 8, 1984

Applicable Area: Miscellaneous

Question considered:

Does an arrangement between a Senator and several cable television organizations in the Senator's state providing for televising of the Senator's "town meetings" violate any Senate Rule?

Facts:

Each of the Senator's cable "town meetings" are held in a studio provided by a cable television station. The Senator answers questions from the audience in the studio and from viewers at home. The Senator has no involvement in either selecting the studio audience or screening or directing questions. The cable franchise operators produce and transmit the town meeting because they feel it is a legitimate news event.

Ruling:

The Committee held that a broadcasting company's televising of what it considers a legitimate news event produced in the manner described is not prohibited by Senate Rules.

INTERPRETATIVE RULING NO. 385

Date issued: July 31, 1984

Applicable Rules: 37 and 41

Question considered:

Under what circumstances may a Senator utilize the services of an individual who is currently employed by an American corporation and who would continue such employment during the period of time that he was acting as a volunteer, uncompensated consultant to the Senator?

Facts:

The Select Committee was asked for its opinion regarding a proposal under which a Senator would utilize the services of a former Senate employee as a part-time consultant in the Senator's office. Under the proposal, the individual would spend approximately one day per week in the Senator's office and would provide the Senator with advice and counsel regarding the administrative operation of the office, future hiring requirements, and his views as to those legislative issues and initiatives which the Senator might wish to evaluate for development by staff. The proposed arrangement between the Senator and the individual would be: that the individual would continue his full-time, compensated duties as head of the Legislative Office of an American Corporation; that the Senator would not compensate him for his efforts on the Senator's behalf; that the Senator would reimburse the individual for any out-of-pocket expenses incurred on the Senator's behalf from Senate allowances; and that, although the individual would continue as an employee of the Corporation during the time in which the Senator would be utilizing the individual's expertise, he would engage in no campaign-related activities and he would conduct himself in such a manner so as to avoid both an actual conflict of interest and the appearance of a conflict between his responsibilities to the Senator and his duties with the corporate employer.

Discussion:

On several occasions, the Committee has ruled upon the propriety of various proposals which involved a Senator's interest in utilizing the services of an individual who would, at the same time, retain some degree of affiliation with another non-Senate employer. In Interpretative Ruling No. 283 (dated September 25, 1979), the Committee approved the hiring, as part-time Senate employees, of two attorneys, one of whom was a partner in a law firm and the other was a member of a State legislature. In Interpretative Ruling

No. 314 (dated March 25, 1980), the Committee approved the hiring of an individual, as a part-time employee in a Senator's office, while the individual remained a full-time employee of a registered lobbying group. In Interpretative Ruling No. 338 (dated September 23, 1980), the Committee approved the proposal of a Senator to hire, as a part-time staff assistant, an individual who would continue on as a full-time writer for a group which was registered lobbyist. Lastly, in a letter dated August 6, 1982, the Committee approved a Senator's request to hire, as a full-time Senate employee, an individual who was then an employee of a major industrial corporation and who proposed to take a "leave of absence" from the corporation while working for the Senate, to return to the corporation when he completed his Senate service, and, while a Senate employee, to retain his health/retirement/life insurance benefits with the corporation, a portion of which would continue to be provided by the corporation.

While several of these rulings turned on the question of the application of paragraph 5 of Rule 37 ("Conflict of Interest") and the issue of what constitutes an "affiliation" as that term is used in Rule 37.5, the Committee noted that because this particular individual would not be compensated by the Senate, the threshold test for application of Rule 37.5 would not be met in this case. On the other hand, all of these rulings had, as a common concern, the general issue of what constitutes either an actual conflict of interest or the appearance of a conflict of interest between the prospective employee's duties to the Senate and his or her responsibilities to the non-Senate employer with whom the employee would have a continuing employment relationship. Such a concern also applies in this particular case, despite the fact that this individual would not be a compensated Senate employee. Because of the nature of the individual's employment with the employing corporation, the Committee was of the opinion that the Senator would be under a substantial obligation to ensure himself that the individual would make clear to those with whom he has contact on the Senator's behalf, both within the Senate and among the public, that he is acting in his capacity as the Senator's assistant and not as an employee of his employing corporation. In that regard, the Committee noted that the Senator's letter of inquiry made clear that the individual would notify those individuals with whom he has contact on the Senator's behalf.

While the Committee was of the opinion that the potential for confusion as to the individual's role does exist, the Committee also believed that such confusion can be successfully minimized by the Senator's active monitoring of the activities undertaken on his behalf by the individual. Although the Committee could not assure the Senator that his acceptance of the services offered by the individual would not result in some measure of public interest, the Committee was confident that the Senator would be able to structure the individual's efforts so as to address, before the fact, the potential for confusion or the appearance of a conflict regarding his responsibilities to the Senate. In that regard, the Committee advised that it would be necessary for this individual to recuse himself from any activity on the Senator's behalf which might impact on the interests of the employing corporation specifically and its industry generally.

Lastly, the Committee noted that Rule 41, paragraph 6(a) would require the Senator to disclose the source of the compensation which the individual would be receiving while performing services for the Senator, unless, as set forth in paragraph 6(c) of Rule 41, the individual would be performing those services for less than eight hours per week.

Ruling:

No rule of the Senate would preclude the proposal outlined above. While the opportunity for some confusion does exist with respect to the individual's role as an uncompensated advisor to the Senator and, simultaneously, a compensated employee of a major corporation, the Senator will be under a substantial obligation to make every effort to minimize the potential for such confusion. With the Senator's assurance that such efforts will be undertaken and assuming the Senator's active role in assuring that there is no actual or apparent conflict of interest between the individual's duties to the Senator and his responsibilities to his employer, the Select Committee advised the Senator that the proposal could be undertaken.

INTERPRETATIVE RULING NO. 386

Date issued: August 8, 1984

Applicable Rules: 34 and 35

Question considered:

Are there any circumstances when a loan of an item might constitute a "gift", to which the restrictions of Senate Rule 35, on Gifts, and the financial disclosure requirements of the Ethics in Government Act, might apply?

Facts:

The Ethics Committee has routinely ruled that no provision of the Code of Conduct prohibits Members from accepting the use of loaned furniture, furnishings, and office equipment for use in their offices. The rulings have also advised that use of the items is subject to approval by the Committee on Rules and Administration. Senators now ask whether they should disclose their use of those items.

Discussion:

The definitions of the term "gift", both in Senate Rule 35, at paragraph 2, and in the Act at section 107(3), include the term "forbearance," which means the refraining of enforcement of something that is due, such as a debt, right, or obligation. Under this standard, the use of borrowed furniture or equipment could arguably qualify as a gift. At the same time, however, there are compelling reasons why these items should not be treated as gifts. First, the items are not meant for the personal use or permanent possession of Members or staff. Ownership is retained by the lender.

Second, the items are frequently the products of home State businesses and organizations which Members of Congress have a traditional role in promoting. Finally, in the case of business equipment, its use provides the Senate with an evaluation of its desirability for purchase by the Senate. For these reasons, the Committee decided that the restrictions of the Senate Gift Rule and the financial disclosure provisions of the Ethics in Government Act of 1978 are inapplicable.

Notwithstanding this determination, the Committee agreed that there is a public interest in providing a formal means for sanctioning and disclosing the use of private property for official use. To accomplish this objective, the Committee determined that all Members who either now possess or plan to use loaned furniture, furnishings, and equipment should submit a written request to the Ethics Committee for a determination that the arrangement is within the standards of the Code of Official Conduct. In turn, the Ethics Committee will make available for public inspection at the office of the Committee all responses which sanction the use of loaned furniture, furnishings, and equipment.

Ruling:

Items such as office furniture, furnishings and business equipment lent by owners to Members for use in a Senate office do not constitute gifts for purposes of the Gift Rule or the Financial Disclosure Act. They are, however, subject to the disclosure procedures set forth in this ruling.

INTERPRETATIVE RULING NO. 387

Date issued: September 17, 1984

Applicable Rule: 41

Question considered:

Does Rule 41 restrict designated staff to political fund-raising only on behalf of the employing Senator?

Ruling:

The scope of the Rule's permission is set forth in the second sentence of the Rule, where it provides that the prohibition "does not apply to two assistants to a Senator . . . who have been designated by that Senator to perform *any of the functions* described in the first sentence of this paragraph . . ." (Emphasis added). This underscored "any of the functions" language refers to the language in the first sentence, which in sweeping terms covers handling money "in connection with *any campaign* of the nomination for election, or the election, of *any individual* to be a Member of the Senate or *to any Federal office.*" (Emphasis added).

Upon review, the Committee agreed unanimously that the text allows properly designated staff, with the employing Senator's permission, to receive, solicit, be a custodian of, or distribute funds on behalf of any campaign committee that is established, organized, and controlled by any Senator or group of Senators. This permission extends, for example, to fund-raising on behalf of (a) any Sena-

tor's principal campaign committee, whether for reelection to the Senate or election to any other office; (b) any multi-candidate committee established and controlled by any Senator; and (c) any multi-candidate committee established and controlled by any group of Senators. The permission would not extend, however, to a committee not established and controlled by a Senator, such as committees established by trade associations, interest groups, corporations, labor unions, or groups advocating particular public policy or ideological causes.

INTERPRETATIVE RULING NO. 388

Date issued: September 17, 1984

Applicable Area: Honoraria Limitation

Question considered:

Members of the Senate may receive honoraria in an amount equal to no more than 30% of their Senate salary. Members serving in certain leadership positions receive a higher salary than their colleagues. How is the 30% limitation calculated for Senators serving in such leadership positions?[54]

Ruling:

The 30% limitation on honoraria is applicable to the total statutory salary a Member receives from the Senate. Thus, if a Member serving in a leadership position receives a Senate salary higher than his or her colleagues, the limitation is calculated on the higher salary.

INTERPRETATIVE RULING NO. 389

Date issued: July 2, 1984

Applicable Rule: 38

Question considered:

How must a Member disclose his use of campaign funds to defray the otherwise unreimbursed expenses he incurs in connection with his official duties?

Discussion:

Rule 38 allows funds derived from "political committees" to be used to defray expenses incurred by a Member in connection with his official duties. The Rule's legislative history indicates that the limitations contained in the Federal Election Campaign Act on both the sources and amounts which could be contributed to political committees and the Act's public disclosure requirements were major factors in leading the Senate to authorize the use of such funds to defray official expenses.

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[54] The current limitation on honoraria is 40 percent of the Senator's base salary. This limitation became effective January 1, 1986 and is the result of an amendment to the Supplemental Appropriations Act for Fiscal Year 1983, which became Public Law 99-190, agreed to December 19, 1985.

The Committee believes that the Senate Code of Official Conduct in general, and Senate Rule 38 in particular, reflect a Senate policy which requires timely public disclosure of Members' financial transactions. With that policy in mind, the Committee believes Members who use campaign funds to defray otherwise unreimbursed expenses incurred in connection with official duties should see to it that an itemization of expenditures is publicly disclosed. When a campaign committee defrays a Senator's official expenses, the committee should report each itemized expenditure in its reports filed under the Federal Election Campaign Act. If a Member chooses to transfer funds to an office account for subsequent disbursement, full disclosure of the use to which those funds have been put may be reported in the "reimbursement" section of the Senator's financial disclosure report under the Ethics in Government Act of 1978.

Ruling:

Members who use campaign funds to defray otherwise unreimbursed expenses incurred in connection with official duties should see to it that an itemization of expenditures is publicly disclosed. When a campaign committee defrays a Member's official expenses, the campaign committee should report each itemized expenditure in its reports filed under the Federal Election Campaign Act. If a Member chooses to transfer funds to an office account for subsequent disbursement, full disclosure of the use to which those funds have been put may be reported in the "reimbursement" section of the Senator's financial disclosure report under the Ethics in Government Act of 1978.

INTERPRETATIVE RULING NO. 390

Date issued: October 4, 1984

Applicable Area: Franking

Question considered:

May Senate staff be assigned to accept applications for federal appointments, keep them on file, and send copies of applications to members of a Search Committee established by a Senator for making recommendations for appointment? Second, may the franked mail privilege be used to send copies of applications and related materials between a Senate office, members of the Search Committee, and the individual applicants?

Discussion:

It is proper for a Member to assign staff to work with applicants for federal appointments and with individuals who he has asked to make recommendations concerning appointments. Maintaining records and other materials concerning this work in a Senate office is also proper. In addition, the franked mail privilege may properly be used in this process because its use under these circumstances fits within the declared policy of the Congress in establishing the franking privilege: "to assist and expedite the conduct of the official business, activities, and duties of the Congress of the United States" (39 U.S.C. section 3210(a)(1)).

Ruling:

A Member may assign staff to work on applications for federal appointments, and a Member may properly use the franked mail privilege to mail documents associated with this work.

INTERPRETATIVE RULING NO. 391

Date issued: October 10, 1984

Applicable Area: Limitation on Honoraria

Question considered:

May a Senator who has reached the limit on acceptance of honraria for a calendar year defer the receipt of further honoraria to the next calendar year?

Facts:

In 1983 a statute was enacted which provided that beginning in calendar year 1984 a Senator may not receive honoraria during a calendar year in an amount totaling more than 30% of the aggregate salary paid to the Senator for service as a Member of the Senate during that calendar year. The statute, codified at 2 U.S.C. 31-1, states that, for the purpose of determining whether to count an honorarium against the ceiling in effect for the year when the honorarium is actually earned or for the year in which it is received, an honorarium is attributable to the calendar year in which it is received.

Ruling:

The Committee held that while an honorarium is counted against the year in which it is received, Members should make every effort to secure payment of an honorarium in the year in which it is earned. Further, the Committee noted that a Member may not accept the offer of an organization to defer payment of an honorarium to a subsequent calendar year in order to avoid the limitation on honoraria applicable for the year in which the honorarium is earned.

INTERPRETATIVE RULING NO. 392

Date issued: August 20, 1984

Applicable Rule: 35

Question considered:

May an adult dependent of a Member accept travel expenses incident to accompanying the Member on a trip involving speaking engagements and fact-finding?

Facts:

A Member's adult dependent son has been invited to accompany the Member on a trip to various sites within a State. The son's expenses to and from the State are to be paid by the State Government, and his expenses within the State are to be provided by the sponsors of the events which the Member plans to attend.

Discussion:

No provision of the Code of Official Conduct prohibits a dependent from receiving transportation expenses from a State. In addition, an adult dependent of a Member may, consistent with Rule 35, accept the necessary expenses of travel which are incident to an appearance or fact-finding trip of a Member under circumstances where the dependent is to carry out responsibilities in connection with the appearance as would an aide to a Senator.

Ruling:

An adult dependent of a Member, who is performing the duties that would be expected of an aide from a Member's official Senate staff, may accept the necessary expenses of travel which are incident to an appearance or fact-finding trip of the Member.

INTERPRETATIVE RULING NO. 393

Date issued: July 31, 1984

Applicable Area: Franking

Question considered:

May a Member use his franking privilege to communicate with State and local officials on matters of State and local concern, and with constituents who have contacted the Member on State and local matters?

Facts:

A Member asked whether the provision "matters of purely State and local concern are not frankable" found in the *Regulations Governing the Use of the Mailing Frank* prohibits him from corresponding with constituents and State and local officials on State and local issues.

Discussion:

The provision in the *Regulations* which prohibits franked mailings on State and local issues is too restrictive when read in isolation from other provisions of the statute. On the specific question presented, we believe the franking privilege may properly be used to communicate with State and local officals on matters of State and local concern, and with constituents who have contacted a Member on State and local matters. This conclusion is based on the permission found in section 3210(a)(2) of Title 39, U.S. Code, which authorizes the franking privilege for matters which pertain to "any congressional representative function generally." Notwithstanding this determination, the statement in the *Regulations,* "matters of purely State and local concern are not frankable" is valid as applied to mass mailings which are sent at a Member's initiative and which should relate principally to federal matters and the impact of federal policies on States, communities, and individual citizens.

Ruling:

A Member may use his franking privilege for correspondence on State and local matters under the circumstances described.

INTERPRETATIVE RULING NO. 394

Date issued: January 18, 1985

Applicable Area: Rules 34 and 35

Question considered:

Are there any circumstances under which a Member, officer, or employee of the Senate could accept a ticket to an inaugural event which would be provided by an individual representing a company with a political action committee?

Facts:

An employee on the personal staff of a Member of the Senate has been offered two tickets to attend an inaugural event by an individual who is an official of a company which maintains a political action committee registered with the Federal Election Commission.

Discussion:

While Rule 35 (Gifts) provides that Members, officers, and employees of the Senate may not accept a gift, as that term is defined in paragraph 2 of the Rule, from what is deemed to be a "prohibited source" which would include an individual who represents a corporation which maintains a political action committee registered with the Federal Election Commission, an exception to this prohibition is provided for in paragraph 2(a)(6) of the Rule. Under this exception, "meals, beverages and entertainment" may be accepted from an individual who might otherwise be deemed a "prohibited source" for other purposes of the Rule, provided that the "meals, beverages, and entertainment" are not accepted in connection with a gift of overnight lodging. In reviewing this exception to the definition of a "gift", the Committee concluded that the intent of the framer of this provision was to allow Members, officers, and employees of the Senate the ability to accept meals, beverages and entertainment in the Washington Metropolitan Area and that such acceptance would not be contrary to the provisions of paragraph 1 of the Gift Rule, so long as the acceptance was not in connection with a gift of overnight lodging. Relying on this exception and the legislative history, the Committee ruled that a ticket or tickets to an inaugural event could be accepted from a "prohibited source".

If the recipient of the ticket or tickets is required to file a public financial disclosure statement, pursuant to Rule 34 of the Standing Rules of the Senate, and if the value[55] of the food, beverages and entertainment received was in excess of $250, the receipt of the ticket or tickets would be disclosed as a "gift of transportation, lodging, food, or entertainment."

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[55] See, Interpretative Ruling No. 7, dated May 11, 1977.

Ruling:

The gift of a ticket or tickets to an inaugural event may be accepted under Rule 35 of the Standing Rules of the Senate (Gifts), pursuant to the exception set forth in paragraph 2(a)(6) of the Rule, and depending upon the value of the ticket or tickets, their receipt should be disclosed on the annual public financial disclosure statement as required by Rule 34 of the Standing Rules of the Senate.

INTERPRETATIVE RULING NO. 395

Date issued: April 23, 1985

Applicable Area: Franking

Question considered:

The franking statute (39 U.S.C. 3210 et seq.) authorizes the franking of letters of congratulations to individuals who have achieved some "public distinction." Are the following "public distinctions" for purposes of the Act?

1) a Sr. High School student who is graduating as valedictorian;

2) a Sr. High School student who is graduating as salutatorian; and

3) Sr. High School students who are graduating within the top ten academic ranking of their class.

Ruling:

While being named valedictorian or salutatorian of your high school, or graduating within the top ten academically are certainly significant personal achievements, such accomplishments do not constitute "public distinctions" for purposes of the franking statute.

INTERPRETATIVE RULING NO. 396

Date issued: May 13, 1985

Applicable Rule: 37

Question considered:

How do the post-employment lobbying restrictions of Rule 37, paragraph 9 ("Conflict of Interest") apply to a former Senate employee who held positions with several Senators during his career, including two different Chairmen during the last six months of Senate employment?

Standing Rule 37, paragraph 9 provides that "[i]f an employee on the staff of a committee upon leaving his position becomes . . . a registered lobbyist or is employed or retained by a . . . registered lobbyist for the purpose of influencing legislation, such employee may not lobby Members of the committee for which he worked or the staff of that committee for a period of one year after leaving his position." Rule 37, paragraph 10(c) provides the definition for the term "lobbying".

Facts:

The long-time staff director of a Senate committee retired on January 3, 1985 to begin a new career as a consultant to a political organization. During his employment with the committee, he was supervised by several Chairmen. A few weeks after his retirement, the new committee Chairman asked the staff director to return to the Senate payroll as a consultant to the committee for about six weeks so as to provide a transition period for the new staff director. The former staff director, who had been contemplating registering as a lobbyist under the 1946 Federal Regulation of Lobbying Act, was unsure about whether the restrictions of Rule 37, paragraph 9, were applicable to his committee associations as of January 3, the date of his initial retirement, or as of the conclusion of his subsequent six-week consultancy to the committee.

Ruling:

Where an employee leaves the Senate payroll and registers as a lobbyist under the 1946 Federal Regulation of Lobbying Act, the post-employment lobbying restrictions of Rule 37, paragraph 9, would prohibit such an individual from "lobbying" the Senators and staff who held positions with that individual's former committee on the final day of his employment with the committee. Under the facts presented, such date was deemed to be the termination of the employee's six-week consultancy with the committee rather than the earlier date on which he had "retired".

An individual who is uncertain as to whether he is required to register pursuant to the Lobbying Act should confer with the Clerk of the House of Representatives.

INTERPRETATIVE RULING NO. 397

Date issued: May 24, 1985

Applicable Rules: 34 and 37

Question considered:

What Senate Rules or ethical considerations are relevant with regard to a Senator's spouse accepting a compensated position with a tax-exempt, educational organization whose purpose is educating the public on a policy issue before the Congress?

Facts:

A Washington, D.C. based, tax-exempt, educational organization has offered the spouse of a Senator a compensated position as its Director of Public Education. The organization, which receives no funding from the Federal government, has as its purpose the education of the public on a narrowly focused policy issue which is the subject of on-going hearings and legislative initiatives in Congress. As the Director of Public Education, it will be the responsibility of the spouse to promote the programs and interests of the organization and to increase the public's awareness of the policy issue which is the focus of the organization's efforts.

Discussion:

Only two provisions of the Code of Official Conduct specifically deal with the spouse of a Member: Standing Rule 34 (Public Financial Disclosure) which requires a Senator to disclose the source of any earned income in excess of $1,000 received by a spouse, and Standing Rule 35 (Gifts) which is applicable not only to Members, officers, and employees, but also to spouses and dependents as well. The Committee has also recognized that the compensated employment of spouses is a matter of interest to the public. Thus, in Interpretative Ruling No. 336, dated September 5, 1980, the Committee stated its view that a Senator's spouse's lobbying on behalf of a corporation on whose board the spouse served, might, under certain circumstances, reflect adversely upon the Senate as an institution.

Reviewing the facts presented in this case, the Committee noted that the organization which would employ the spouse had a tax exemption from the Internal Revenue Service and therefore, under regulations promulgated by the Service, had agreed to the substantial limitations imposed by the Internal Revenue Code on the lobbying of Members of Congress. The Committee concluded, therefore, that the specific concerns outlined in Interpretative Ruling No. 336 would not be directly applicable to this proposed employment. The Committee further noted that the spouse's employment with the organization would be disclosed on the Senator's public financial disclosure statement. Given heightened public interest in the professional activities of spouses of Members, the Committee expressed its hope that spouses, as well as Members, would conduct their professional and business activities so as not to reflect adversely upon the Senate as an institution.

Ruling:

No Rule of the Senate prohibits the spouse of a Senator from accepting compensated employment with a tax-exempt educational organization where the spouse's responsibilities will be focused on educational activities for the public rather than lobbying the Congress. Such employment must be disclosed by the Senator on the annual public financial disclosure statement as mandated by Rule 34 of the Standing Rules of the Senate.

INTERPRETATIVE RULING NO. 398

Date issued: May 24, 1985

Applicable Rule: 41

Question considered:

May the salary of an individual employed to perform official duties in a Senator's office be paid one-half from appropriated funds and one-half from the Senator's principal campaign committee?

Facts:

A Senator intends to hire an individual who has such a high degree of expertise that the individual could command a substantially higher salary in the private sector than the Senator is able to provide from appropriated funds. The Senator proposes to put the individual on the Senate payroll and supplement the employee's Senate salary with funds from his principal campaign committee.

Discussion:

The Senate allows Members to use the services of individuals whose compensation is derived from non-governmental sources. Thus, in Rule 41, paragraphs 4 and 6(a), certain compliance and disclosure requirements were established for Senators who utilized the services of such individuals. In addition, Rule 38 provides that Members may use funds derived from political committees to defray the unreimbursed, but official, expenses of operating their Senate offices. In Interpretative Ruling No. 248, dated April 27, 1979, the Committee held that a member could hire a summer intern, who would be compensated exclusively from funds derived from the Senator's principal campaign committee.

Ruling:

Having reviewed the precedents, the Committee held that the salary of a Senate employee may be supplemented with funds derived from the supervising Senator's principal campaign committee.

The Committee also stated that paragraph 6(a) of Rule 41 requires that the Senator report to the Select Committee the employment of such an individual in the Senate office. In addition, paragraph 4 of Rule 41 provides that such an individual is to be treated as a Senate employee receiving compensation disbursed by the Secretary of the Senate in an amount equal to the amount of compensation received by the employee from any source for performing services in a Senator's office. Because the application of several provisions of the Code of Official Conduct, including Rule 34, (Public Financial Disclosure), turn on the amount of compensation received by the employee, the Senator's attention was specifically directed to the above-referenced provision in Rule 41.

INTERPRETATIVE RULING NO. 399

Date issued: July 15, 1986

Applicable Rule: 35

Question considered:

May a Member accept juices and other products from a company which maintains a separate segregated fund for political purposes?

Facts:

A consumer food products company offered to supply a member's office with juices and other products for the use of his staff and distribution to visitors to the office. The company, which maintains a separate segregated fund for political purposes, was not a "home State" corporation producing "home State products" as those terms are used in Interpretative Ruling Nos. 17, 267 and 386.

Discussion:

Senate Rule 35 prohibits Members and staff, and their spouses and dependents, from accepting during a year any gift or gifts valued at more than $100 from an organization which has a direct interest in legislation before the Congress. The Rule says such organizations include those which maintain a separate segregated fund for political purposes.

Since the company maintains a separate segregated fund for political purposes, "gifts" worth more than $100 should not be accepted from them. While the Rule provides that this prohibition does not include "meals, beverages, or entertainment consumed or enjoyed", the Ethics Committee decided to follow the legislative history in confining this exception to events such as restaurant meals. This provision has not been extended to allow the acceptance of products for use or distribution by Members or staff.

Ruling:

The Rule does not allow acceptance of juices and other products worth more than $100.

This Interpretative Ruling should not be read as overruling Interpretative Ruling Nos. 17, 267, and 386 which recognized and approved the historical practice followed in some offices of making home State products, of minimal value, available to constituents and others who visited the office. Such products are most often in the form of food and beverages, such as apples, peanuts, coffee and orange juice. Obviously, these products are provided by businesses back in the Senator's home State, and some of the individuals or organizations involved in providing them may fall within the definition of those with a "direct interest in legislation." Nevertheless, the Committee felt that the time-honored tradition did not involve any conflict of interest and provision of home State products, for this type of distribution, should not be regarded as a gift to the Senator or the office since it is passed on to those visiting the office.

INTERPRETATIVE RULING No. 400

Date issued: August 2, 1985

Applicable Rule and Area: 38, FECA

Question considered:

May a Senator direct that his principal campaign committee open a separate bank account and disburse funds from that account for the purpose of offsetting unreimbursed but official expenses incurred by the Senator in the operation of his Senate office?

Facts:

The principal campaign committee of a Senator would raise contributions and segregate certain of those funds in a bank account which would be opened by the committee and administered separately from other committee accounts, the exclusive purpose of which would be to offset unreimbursed but official expenses in-

curred in the operation of the Senator's office. The Senator's reelection campaign committee is concerned about the possible application of certain provisions of the Internal Revenue Code to funds contributed to and then expended by the committee for the purpose of offsetting unreimbursed but official expenses of operating the Senator's office. Contributors to the account would be apprised of its purpose and the possible tax implications of such contributions. The Committee has agreed that the contribution limitations and disclosure provisions of the Federal Election Campaign Act would be fully applicable to this account.

Applicable Rule:

Rule 38 of the Standing Rules of the Senate provides that:

"1. No Member may maintain or have maintained for his use an unofficial office account. The terms 'unofficial office account' means an account or repository into which funds are received for the purpose, at least in part, of defraying otherwise unreimbursed expenses allowable in connection with the operation of a Member's office. An unofficial office account does not include, and expenses incurred by a Member in connection with his official duties shall be defrayed only from—

"(a) personal funds of the Member;

"(b) official funds specifically appropriated for that purpose;

"(c) funds derived from a political committee as defined in section 301(d) of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431); and

"(d) funds received as reasonable reimbursements for expenses incurred by a Member to the organization making the reimbursement.

"2. No contribution (as defined in section 301(e) of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431)) shall be converted to the personal use of any Member or any former Member. For the purposes of this Rule "personal use" does not include reimbursement of expenses incurred by a Member in connection with his official duties."

The Committee would like to open a separate bank account to be administered solely by the Committee whose purpose would be to offset such office expenses.

Ruling:

A separate bank account to be established by a Senator's reelection committee would be consistent with the provisions of Standing Rule 38 (Unofficial Office Accounts) provided that contributions to the account would be limited to the contribution levels established in the Federal Election Campaign Act, and that contributions received and disbursed by the account would be disclosed as is provided for in the Act. We are of the opinion that contributions received by this separate account could be utilized by the Senator, pursuant to section 1(c) of Standing Rule 38, to defray official, but unreimbursed, expenses of holding public office.

INTERPRETATIVE RULING NO. 401

Date issued: October 3, 1985

Applicable Area: Franking

Question considered:

May a Senator use the frank to send brochures on tourist attractions in his home State to individuals who request tourist information?

Discussion:

The franked mail statute, at 39 U.S.C. section 3210(a) (3)(A), authorizes the franking of mail matter "regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress." *The Regulations Governing the Use of the Mailing Frank* provide, with regard to this provision, that "[t]hese matters generally relate to legislative actions or the official business of a Senator's office and must relate principally to the Federal government." Since these provisions restrict the use of the mailing frank to materials relating to the activities of the Congress and the Federal government, tourist information about a Member's home State would not be frankable mail matter.

Ruling:

The mailing frank may not be used to send brochures on State tourist attractions.

INTERPRETATIVE RULING NO. 402

Date issued: October 18, 1985

Applicable Rules: 37 and 41

Question considered:

May a Senator's personal secretary receive compensation from her employing Senator's principal and multi-candidate campaign committees for the political services she is performing for these committees?

Facts:

A Senator's personal secretary devotes some time in the evenings and on weekends consulting with her employing Senator's campaign committee and multi-candidate committee. The employing Senator emphasizes that the services she performs take place during her off-duty hours and during the established and reasonable periods of vacation time provided to his staff. Her campaign committee responsibilities include matters relating to the Senator's political schedule, identification of prior and potential contributors, and preparation of the reports required by the Federal Election Campaign Act. She is designated as one of the Senator's staff who is allowed by Senate Rule 41 to receive, solicit, and disburse campaign funds.

Discussion:

Senate Rule 41 sets forth the general rule that Senate staff are not allowed to solicit, receive or disburse campaign funds. The Rule provides, however, that each Senator may designate as many as two individuals on his personal staff who are allowed to receive, solicit and disburse campaign funds for a committee or committees established by a Senator. In light of the Senator's designation of his secretary to perform these functions, she is allowed to do so under Senate Rules.

The Committee has ruled on a number of occasions that a Senate employee may engage in political activity not involving the solicitation, receipt, custodianship or distribution of campaign funds outside of regular office hours, on weekends and during regular and reasonable periods of vacation time.

Finally, the Senate Conflict of Interest Rule (Rule 37) allows Senate staff to receive compensation for non-Senate employment so long as the employment is not inconsistent or in conflict with the conscientious performance of official duties. Paragraph 3 of Rule 37 requires that an employee's supervising Senator make the initial determination that no conflict exists. In light of the Senator's apparent determination that his secretary's services for his campaign committees do not conflict with her Senate duties, her receipt of compensation is not prohibited by Senate Rules. However, the Senator must continue to monitor the employee's outside activities so that they will not give rise to a conflict of interest.

Ruling:

The staffer may receive compensation from the employing Senator's principal or multi-candidate campaign committee for the services she is providing.

INTERPRETATIVE RULING NO. 403

Date issued: October 30, 1985

Applicable Rule: 34

Question considered:

Is a reporting individual required to disclose the acceptance of travel-related expenses from subdivisions of State governments, such as counties, cities, and municipal water authorities?

Applicable rule:

Section 107(8) of the Ethics in Government Act of 1978 (Rule 34) provides:

> (8) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—
>
> (A) provided by the United States Government, the District of Columbia, of any State or political subdivision thereof . . .

Ruling:

The law's exclusion for reporting travel-related expenses received from a *"State or political subdivision thereof"* (emphasis added) indicates that counties, cities, or municipal water authorities are not sources of travel expenses which are required to be listed on a public financial disclosure report.

INTERPRETATIVE RULING NO. 404

Date issued: November 18, 1985

Applicable Rule: 34

Question considered:

May a Senator who is planning to establish a qualified blind trust appoint as trustee an individual who is treasurer of his principal campaign committee?

Discussion:

The Ethics in Government Act of 1978 requires that a trustee of a qualified blind trust must be, among other things, "independent of, and unassociated with, any interested party" (section 102(e)(3)(A)(i)). The legislative history of this provision indicates that a trustee's independence should be evaluated both as a question of fact and as a question of appearances. On the basis of fact, there is no reason for any doubt about the integrity of the campaign treasurer, or about his ability to fulfill the duties of trustee. On the basis of appearance, however, the legislative history states that the drafters of the law intended that an individual who had been a Senator's campaign manager would not be a suitable trustee (S. Rept. 95-639, p. 17 (1978)). In light of this background, we believe a Senator should not choose his campaign treasurer as trustee for a qualified blind trust.

Ruling:

The treasurer of a Senator's principal campaign committee would not be a suitable trustee.

INTERPRETATIVE RULING NO. 405

Date issued: December 18, 1985

Applicable Rule: 38

Question considered:

May a Member borrow money from his principal campaign committee?

Facts:

A Member asked whether he may borrow money from his principal campaign committee, with the loan to be secured by a promissory note which establishes an interest rate comparable to prevailing commercial interest rates.

Discussion:

The Senate in 1968 established a Rule which provided that Senators may only use campaign funds for political or official purposes, and that Senators "shall not use directly or indirectly any part of any contribution for any other purpose." The text of Rule 38 as it exists today "essentially restates" this 1968 Rule, according to the 1977 committee report which accompanied the current Senate Code of Official Conduct.

In addition, the influential position a Member holds in deciding upon the disposition of funds held by their campaign committee could have the effect of making the Member both the lender and the borrower. Fulfilling these two roles may present the appearance of, or an actual, conflict of interest.

Finally, the Ethics Committee cannot assume the role of judging the adequacy of the security, interest rate, and repayment terms of routine borrowing by Members. That role is better fulfilled by Members making their financial transactions with independent lenders, and having their financial arrangements scrutinized through their public financial disclosure reports.

Ruling:

The historical background of Senate Rule 38, and other considerations, indicate that the Rule does not allow a Member to borrow from his principal campaign committee.

INTERPRETATIVE RULING NO. 406

Date issued: December 18, 1985

Applicable Area: Foreign Gifts and Decorations Act

Question considered:

May Members keep gifts which have a value of more than $100 if those gifts are given by foreign governments?

Ruling:

The Foreign Gifts and Decorations Act provides that any Federal official, including any Member, officer, or employee of the Senate, who receives from a foreign government a gift of more than "minimal value" is required to deposit the gift with the Secretary of the Senate for disposal. The Act also provides that the Select Committee on Ethics may allow such gifts to be retained and used by the Member, officer, or employee during his Senate tenure.

Pursuant to its authority under the Foreign Gifts and Decorations Act, the Select Committee has determined that any gift having a value of over $100 given to Members, officers, and employees of the Senate by a foreign government shall be deemed to be of more than "minimal value" for purposes of the Act and shall therefore be deemed to have been accepted on behalf of the United States Government. If a Senator who receives from a foreign government a gift of more than "minimal value" would like the Committee to authorize the display or use of the gift in his Senate office, he should contact the Committee.

INTERPRETATIVE RULING NO. 407

Date issued: January 28, 1986

Applicable Area: Use of Senate Letterhead

Question considered:

May a Senator use letterhead including the words "United States Senate" for letters to be sent from his office to individuals who have achieved a "personal distinction"?

Discussion:

In 1978, the Select Committee issued an advisory opinion on the use of "United States Senate" letterhead which held that Members could not use such letterhead for letters sent out over their signatures by a non-Senate organization but could use such letterhead for other correspondence from their offices.

In 1981, the Congress repealed that portion of the franking statute (39 U.S.C. section 3210 et seq.) authorizing the use of the frank for letters of congratulations to individuals who had achieved some "personal distinction", but retained authority for sending under the frank letters congratulating those who had achieved a "public distinction."

The Committee concluded that the recission of the authority to use the frank for congratulatory letters to individuals who had achieved a "personal distinction" had not limited the right of Members to use "United States Senate" letterhead for such mailings.

Ruling: Yes.

INTERPRETATIVE RULING NO. 408

Date issued: March 12, 1986

Applicable Area: Advisory Opinion on Use of Letterhead

Question considered:

Is the Advisory Opinion of the Select Committee, issued on August 14, 1978, regarding the use of letterhead and/or envelopes which utilize the words "United States Senate" and "Official Business" or any combination thereof, applicable to a Senator's personal use of such letterhead which contains a solicitation of funds or support for a campaign for election or reelection to any Federal, State, or local office?

Advisory Opinion:

"It is the opinion of the Select Committee that it is improper conduct which reflects upon the Senate for a Senator to authorize or allow a non-Senate individual, group, or organization to use the words 'United States Senate' and 'Official Business,' or any combination thereof, on any letterhead or envelope. The use of a Senator's name followed by the words, 'United States Senate', is not hereby deemed improper."

Facts:

In an invitation which was written on official Senate letterhead which includes the words "United States Senate, Washington, D.C. 20510", a Senator invited individuals to a dinner which was directly connected to the raising of funds for his campaign for reelection. The letter of invitation was prepared by the Senator himself and was sent from his office.

Discussion:

The Select Committee's Advisory Opinion of August 14, 1978 on the use of the words "United States Senate" on letterhead and envelopes was prompted by the receipt of a substantial amount of correspondence from the public concerning the use by non-Senate groups and organizations of facsimiles of United States Senate letterhead in their fundraising appeals. Typically, prior to August 14, 1978, a Senator would agree to write a fundraising letter on behalf of a non-Senate group or organization and allow that organization to include the Senator's letter in a fundraising appeal to be sent by that group or organization. In most instances, the Senator's letter was written on a facsimile of official United States Senate letterhead and in many instances was mailed in envelopes which bore the return address of the United States Senate. The concern expressed by the public was that they were misled into believing that the mailing was from the Senator whose letterhead was used when, in fact, it was really from a private group. As a result, the Committee developed an Advisory Opinion, pursuant to its authority under S. Res. 110 and S. Res. 338, to issue Advisory Opinions on actions which might tend to reflect discredit upon the Senate. The Advisory Opinion concluded that it was improper for a Member of the Senate to allow a non-Senate organization or group to use letterhead or envelopes which contained the words "United States Senate" and/or "Official Business." During the development of the Advisory Opinion, concern was expressed by some Members of the Committee that while the Advisory Opinion should restrict the use of Senate letterhead by non-Senate groups or organizations, such as campaign committees, the Advisory Opinion should not preclude a Senator's personal use of his letterhead for whatever correspondence the Senator thought appropriate. As a result, the Advisory Opinion included, as a last sentence, a proviso that "the use by a Senator of his or her own name followed by the words 'United States Senate' is not hereby deemed improper."

Since the adoption of this Advisory Opinion, the Committee has been asked by Senators on several occasions about the application of the Advisory Opinion to various types of mailings in which the Senator was interested. In these Interpretative Rulings, the Committee has taken the position that while it is improper and a violation of the Advisory Opinion for a Senator to allow a campaign committee or any other non-Senate organization to prepare a mailing which uses letterhead that contains the words "United States Senate" on the masthead of the letter (see Interpretative Ruling Nos. 169 and 254), the Advisory Opinion would not preclude a Member from writing a personal letter on Senate letterhead from his own office (see Interpretative Ruling Nos. 264, 270, and 365).

Because of a concern that the last sentence of the Advisory Opinion was being interpreted too broadly by Members and staff, the Committee reviewed the previous interpretations of the application of the Advisory Opinion and concluded that the Advisory Opinion does preclude a Senator from using letterhead and/or envelopes containing the words "United States Senate" and/or "Official Business", or any combination thereof, for any correspondence, even that prepared personally by the Senator, which solicits a financial contribution or other form of assistance for any campaign for election or reelection to any Federal, State, or local office. Where a Senator desires to correspond with members of the public about a campaign-related matter, such correspondence should be prepared on letterhead which has been paid for by the Senator's personal funds or funds derived from his campaign committee and which does not employ the words "United States Senate" and/or "Official Business."

Ruling:

The Select Committee's Advisory Opinion of August 14, 1978 on the use of official letterhead does apply to and therefore restricts a Senator's personal use of letterhead and/or envelopes which utilize the words "United States Senate" and/or "Official Business" or any combination thereof, where the correspondence involves a request for a financial contribution or other form of assistance for any campaign for election or reelection to any Federal, State, or local office. Additionally, this ruling would preclude the use of such official letterhead by a Senator to write "thank-you" letters to contributors or campaign workers.

Lastly, through previous Interpretative Rulings, the Select Committee has approved the use of letterhead, by a Senator, which uses the Senator's name followed by "United States Senator." This latter form of letterhead could be used to address correspondence which involved campaign-related topics including "thank-you" notes for participation in a campaign.

INTERPRETATIVE RULING NO. 409

Date issued: March 14, 1986

Applicable Rule: 38

Question considered:

Does the Rule 38 requirement, that expenses incurred by a Senator in connection with his or her official duties be defrayed only from certain enumerated sources, prohibit a Senator (as a Chairman or a member of a committee or subcommittee of the Senate) or a Senate staffer (as an employee of a committee or subcommittee) from accepting either funds or donated "in-kind" goods or services for use by the committee or subcommittee?

Discussion:

On December 10, 1980, the Select Committee issued Interpretative Ruling No. 341 which held that Rule 38 was *not* applicable to committees of the Senate but rather applied only to the defrayal of unreimbursed office expenses by Senators in their individual capacities. Since that Ruling was issued, the Select Committee has been asked about the application of Rule 38 to various activities by Senate committees and subcommittees. In reviewing its holding in Interpretative Ruling No. 341, the Select Committee was concerned that a decision to place committees and subcommittees outside the restrictions of Rule 38 did not serve the best interests of the Senate or the public.

Reviewing the legislative history of Rule 38, especially Senate Report 95-49, 95th Congress, the report of the Special Committee which authored Rule 38 in 1977, and the floor debate which occurred in March and April of 1977 on the adoption of Rule 38, the Select Committee found *no* legislative history to support the view that the Senate had intended to place outside the scope of the Rule's prohibitions, officially related acts carried out through Senate committees or subcommittees.

Ruling:

Interpretative Ruling No. 341, dated December 10, 1980, is specifically reversed. It is now the position of the Select Committee that Rule 38 specifically applies to Senate committees and subcommittees and that, as a result, committees and subcommittees may not defer unreimbursed but official expenses except as is provided for in Rule 38. Thus, Rule 38 prohibits the defrayal of the officially related expenses of Senators, Senate committees and subcommittees by private sources other than those otherwise authorized in the Rule.

INTERPRETATIVE RULING NO. 410

Date issued: April 3, 1986

Applicable Rules: 34 and 35

Question considered:

Under what circumstances may a Member, officer or employee of the Senate accept travel expenses for a speech or appearance from an organization or entity which is affiliated in some way with the sponsoring organization?[56]

Facts:

A major domestic trade association was holding its annual meeting in San Francisco. The association invited a Senator to address the annual meeting and offered to provide the Senator with round-trip air transportation between his home State and San Francisco. In making the travel arrangements for the Senator, the trade association asked one of its members, a company which was headquartered in the Senator's State and which owned its own corporate aircraft, to provide a seat to the Senator on the affiliate's plane since that plane was already taking company executives to the association's annual meeting.

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[56] See also Interpretative Ruling No. 422, dated December 10, 1987 for an expanded ruling on a similar question.

Discussion:

In addressing the application of the "necessary expense" exception (Rule 35, paragraph 2) to these particular facts, the Committee reviewed previous interpretations of the "necessary expense" exception, especially the scope of Interpretative Ruling No. 41, dated July 1, 1977. Interpretative Ruling No. 41 directed that Senators, who had been offered travel expenses for an appearance from an entity that is defined in Rule 35 as a "prohibited source", could only accept travel reimbursements from the actual sponsor of the appearance. Under the terms of that Ruling, if the travel reimbursement was to be provided by a "member of the group sponsoring the address", rather than the sponsor itself, either the sponsor would have to reimburse the affiliated entity which offered to provide the Senator's transportation or the Senator would have to reimburse the affiliated entity directly.

The Committee's review of Interpretative Ruling No. 41 and the legislative history surrounding Rule 35, as it applies to the reimbursement of travel in connection with a Senator's appearance on behalf of a sponsor, led the Committee to the conclusion that Interpretative Ruling No. 41 was too narrowly drawn. In the Committee's view, the Rule 35 exception which allows Senators to accept travel reimbursements from the sponsor of an appearance, even when that sponsor might be a "prohibited source" for other applications of Rule 35, extends as well to groups which are formally affiliated with the sponsor of the Senator's appearance and which offer travel arrangements to the Senator on behalf of the sponsor. In that regard, the Committee agreed to several tests for determining whether a group was sufficiently affiliated with the sponsor of a Senator's appearance so as to allow that Senator to accept travel arrangements from that group, within the confines of Rule 35. Where the sponsor of a Senator's appearance asks an affiliated group to provide travel arrangements to the Senator in connection with that appearance, the tests for making such a determination are as follows: either (1) the group is a member in good standing of the sponsoring organization, or (2) the directors, principal officers, or trustees of the group are the directors, principal officers, or trustees of the sponsoring organization, or (3) there is a direct corporate and/or finanical relationship between the sponsoring organization and the group.

Ruling:

Under Rule 35, a Member, officer, or employee of the Senate may accept necessary travel expenses in connection with an appearance made by that individual, from a group or entity, which although it is itself not the sponsor of the appearance, has been requested by the sponsor to provide the travel arrangements and is sufficiently affiliated with the sponsor so as to allow the Senator or employee to accept the travel expenses within the confines of the "necessary expense" exception to Rule 35. A group or entity is sufficiently affiliated with a sponsor if either (1) the group or entity is a member in good standing of the sponsoring organization, or (2) the directors, principal officers, or trustee of the group are the directors, principal officers, or trustees of the sponsoring organization, or (3) there is a direct corporate and/or financial relationship between the sponsoring organization and the group.

INTERPRETATIVE RULING NO. 411

Date issued: May 8, 1986

Applicable Rules: 34 and 41

Question considered:

Must an individual who was a "political fund designee" and a Senate employee for only the first three days in 1985 file a financial disclosure report for that calendar year on May 15th of this year?

Applicable rule:

Senate Rule 41, which allows a Senator to designate an employee on his staff to receive campaign contributions, also provides that the designated employee must file annual disclosure reports for those years during which the designation was in effect.

Discussion:

Senate Rule 41 was adopted as part of the Senate Code of Official Conduct in 1977. The proposed Code included a financial disclosure provision (Senate Rule 34) specifically requiring disclosure by political fund designees and all employees who were paid at a rate in excess of $25,000 a year. That Rule also provided that if a political fund designee or Senate employee whose rate of pay would require that employee to file an annual disclosure statement left the payroll during the calendar year, he or she was required to file a financial disclosure statement on his or her last day of employment. The statement was to contain information for the calendar year to the date of termination.

In 1978, the disclosure provisions of the Ethics in Government Act superseded the disclosure requirements adopted as part of the Code of Conduct in 1977. The Ethics in Government Act requires Senators, and Senate employees who make at or above the GS-16 rate of pay for more than 60 days during a calendar year, and who are in office on May 15th of the subsequent year, to file an annual financial disclosure statement. Thus, if a Senator (or an employee) is in office on May 15th, 1986, he must file a report for calendar year 1985. However, if a Senator (or Senate employee) left office before May 15, 1986, no disclosure for calendar year 1985 would be required. The Act does not mention political fund designees.

While the statute provides that, pursuant to Senate or House Rules, a Legislative Branch employee who makes at the GS-16 rate could be required to file financial disclosure reports for that portion of the year during which he or she was a Legislative Branch employee, the Senate has not adopted any rule requiring such disclosure.

Ruling:

Political fund designees who are not in office on May 15th need not file financial disclosure reports for the preceding calendar year.

INTERPRETATIVE RULING NO. 412

Date issued: August 11, 1986

Applicable Rules: 34, 35, and 38

Question considered:

For purposes of Senate Rules, what value is ascribed to the use of a private airplane?

Applicable Senate Rules:

Gift Rule (Rule 35), Prohibition of Unofficial Office Accounts (Rule 38), Disclosure (Rule 34, Ethics in Government Act).

Discussion:

In some circumstances, a Member who uses a private airplane is required to reimburse the provider of the aircraft to avoid either a prohibited gift under the Senate Gift Rule or a prohibited in-kind contribution to an unofficial office account. Senate Rule 38 (Prohibition of Unofficial Office Accounts), generally prohibits private sources from providing funds or services to defray a Member's officially related expenses. Thus, if a friend offers to loan a Member an aircraft to attend town meetings across the Member's home state, the Member must reimburse for the use of the aircraft to comply with Rule 38. Senate Rule 35 (Gifts) prohibits Members from accepting from an individual or organization with a direct interest in legislation, gifts aggregating over $100 in a calendar year. Thus, if a lobbyist offers a Member the use of his airplane to fly the Member on a vacation trip, and if the value of the use of the airplane is over $100, the member must provide reimbursement to comply with Rule 35.

In most circumstances, where reimbursement is not required, the Member will still need to determine the value of the use of the aircraft because, if the value is $250 or more, the use of the aircraft must be disclosed on the Member's annual financial disclosure forms.

In determining the value of an item for both reimbursement and disclosure purposes, the Committee has consistently stated that the applicable standard is the value of the item to the recipient. In the use of private aircraft, the Committee concluded that the value to a Member would be the cost he would have to incur to purchase the same level of service in the open market. The Committee felt that the level of service generally provided in using private aircraft is most nearly equivalent to first-class service provided by commercial carriers where such commercial service is available. Where no regular scheduled commercial service is available, to obtain the same service provided by the use of a private aircraft, a Member would be required to charter an airplane.

Ruling:

The Committee has agreed on the following method for calculating the value of the use of an aircraft for both reimbursement and disclosure:

1. If the cities between which the Member is flying have regularly scheduled air service, regardless of whether such service is direct, then the value of the use of the aircraft is the cost of a first-class ticket from the point of departure to the destination.

2. If the cities have regularly scheduled air service, but only a standard (coach) rate, then the value of the use of the aircraft is the coach rate.

3. If either the city from which the Member flies or his destination does not have regularly scheduled air service, then the value of the use of the aircraft is the cost of chartering the same or a similar aircraft for that flight.

The Committee notes that its ruling is generally consistent with Federal Election Commission regulations pertaining to the use of private aircraft by candidates for Federal office.

The Committee further notes that the Committee on Rules and Administration has adopted travel regulations pertaining to the level of reimbursement to be provided from official funds to Members who seek such reimbursement for air transportation costs they have paid. Our ruling addresses only the reimbursement which Members must make to the individual or organization whose aircraft he uses, not the level of reimbursement Members may receive from official funds.

INTERPRETATIVE RULING NO. 413

Date issued: September 22, 1986

Applicable Rule: 34

Question considered:

Are there any circumstances under which a candidate for nomination or election to the Senate, who has taken the steps necessary under state law to withdraw his or her candidacy, may be excused from the obligation established by the Ethics in Government Act, amended, to file a Public Financial Disclosure Statement?

Discussion:

The Ethics in Government Act, amended, 2 U.S.C. 701 et seq., generally requires the filing of a Public Financial Disclosure Statement by all candidates for nomination or election to the Senate.

The Act contains the following provisions concerning a candidate's obligation to file Public Financial Disclosure Reports. Under 2 U.S.C. section 707(9), "candidate" is defined as:

> an individual, other than a Member, who seeks nomination for election, or election, to the Congress whether or not such individual is elected, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, (A) if he has taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) if he or his principal campaign committee has taken action to register or file campaign reports required by section 304(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a))

A candidate's disclosure obligations are set forth in 2 U.S.C. section 701(d):

> Within thirty days of becoming a candidate in a calendar year for any election to the office of Member, or on or before May 15 of that calendar year, whichever is later, but in no event later then seven days prior to the election, and on or before May 15 of each successive year the individual continues to be a candidate, an individual shall file a report containing the information as described in section 702(b) of this title. Notwithstanding the preceding sentence, in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, such individual need not file a report unless he becomes a candidate for another vacancy in that office or another office during that year.

The next section of the statute which applies to a candidate's filing obligation is 2 U.S.C. section 701(f), which provides that:

> [r]easonable extensions of time for filing any report may be granted by the designated committee of the Senate with respect to those filing with the Secretary . . . but in no event may the extension granted to a Member or candidate result in a required report being filed later than seven days prior to an election involving the Member or candidate. If the day on which a report is required to be filed falls on a weekend or holiday, the report may be filed on the next business day.

In addressing the question posed, above, the Select Committee sought the views of the Civil Division of the Department of Justice, which is charged, by the Act, with responsibility of enforcing the Act. In the view of the Department of Justice:

> . . . an individual who meets the definition of "candidate" contained in section 707(9), but who does not comply with the filing requirements of section 701(d), and does not obtain an extension as permitted by section 701(f), has committed a *prima facie* violation of the Act. If, however, a candidate withdraws before his financial disclosure is due, whether under the original or an extended deadline, that candidate would be excused from compliance.

The Department of Justice has thus drawn a distinction between individuals who have become "candidates" under section 707(9) of the Act, but who have not filed the requisite disclosure statement under section 701(d), on the one hand, and those "candidates" who have requested and received an extension of time for filing the disclosure report from the Select Committee, pursuant to the authority found at section 701(f) of the Act, on the other hand.

In the view of the Department of Justice:

> The Act does not contain any exemption for individuals who have become "candidates" within the terms of section 707(9), but taken steps necessary under state law to terminate their candidacy prior to the election.

This conclusion is based upon the fact that:

> The legislative history of the Ethics in Government Act provides no basis for exempting candidates who, after their filing deadline passes, withdraw prior to the election in which they intended to participate.

The Department bases its conclusion upon the understanding that it was the principal objective of the Congress, in agreeing to the public financial disclosure requirement for candidates, as found in the Act:

> . . . to place candidates "in the exact same position with respect to financial disclosure as an incumbent holder of that office" (1978 U.S. Code Cong. & Ad. News 4216, 4238). If an incumbent is exposed to civil penalties for failing to timely file, while a non-incumbent is able to avoid filing by the expedient of withdrawing from the race immediately before the election, then the legislative purpose of putting the two individuals on equal footing is thwarted. The non-incumbent candidate will have both avoided providing the required information, and been able to remain a candidate throughout the campaign period while not revealing his financial status to the electorate.

Ruling:

There are two, and only two, circumstances under which a candidate for nomination or election to the Senate, who has taken the steps necessary under state law, to withdraw his or her candidacy, will be excused from the obligation to file a Public Financial Disclosure Statement: (1) where the candidate withdraws his candidacy *before* his financial disclosure statement is due, under the deadline set forth at 2 U.S.C. section 701(d); or (2) where the candidate withdraws his candidacy *before* the deadline established by an extension of time for filing granted by the Select Committee, pursuant to 2 U.S.C. section 701(f)

INTERPRETATIVE RULING NO. 414

Date issued: November 18, 1986

Applicable Rules: 34 and 35

Questions considered:

What is the application of Rule 34 ("Public Financial Disclosure") and Rule 35 ("Gifts") to the acceptance by a Senator of a trophy which was presented because of the Senator's winning an athletic contest?

Facts:

A Member of the Senate was invited to participate in several different tennis tournaments. On one occasion, the Senator participated in, and won, a tournament sponsored by a Washington, D.C. tennis facility. In the second instance, a Senator participated in, and won, a celebrity tennis tournament sponsored by the Washington, D.C. office of a major American corporation. In the latter instance, the corporate sponsor of the celebrity tennis tournament would be described as a "prohibited source" for purposes of Rule 35 because the corporation maintained both a political action committee registered with the Federal Election Commission, and retained lobbyists who were registered under the 1946 Federal Regulation of Lobbying Act. In both instances the fair market value of the trophy presented to the Senator was in excess of $100.

Discussion:

In 1980, the Select Committee considered a somewhat similar question posed by a Senator who asked about his wife's acceptance of an airplane ticket which had been awarded to her as a result of a "door-prize" drawing at a charitable fund-raising event. In that instance, the Committee ruled that the prize was not covered by any rule of the Senate Code of Official Conduct, and that as a result, there was no prohibition or restriction on the Senator's spouse regarding the acceptance of the "door-prize". Applying this 1980 precedent to the facts presented above, the Select Committee concluded that the Code of Official Conduct should not prohibit a Member, officer, or employee of the Senate from accepting a trophy presented by the sponsor of an athletic event to the winner of the athletic contest.

While the Committee determined that Rule 35 ("Gifts") would not preclude the acceptance of such a trophy or award, Rule 34 ("Public Financial Disclosure") would require an individual who filed an annual public financial disclosure statement under Rule 34 to disclose the acceptance of such a trophy where the fair market value of the trophy was determined to be in excess of $100. The Select Committee, drawing upon the treatment of such trophies and awards by the Internal Revenue Service, concluded that such a trophy should be disclosed in the "income" section of the individual's public financial disclosure statement.

Ruling:

The acceptance or retention of a trophy or award presented to a Member, officer, or employee of the Senate by the sponsor of an athletic contest in recognition of the Member, officer, or employee winning the competition is outside the scope of Rule 35 ("Gifts"). However, Rule 34 ("Public Financial Disclosure"), would require the disclosure of the acceptance of such a trophy or award in the "income" section of a reporting individual's annual public financial disclosure statement where the fair market value of the trophy or award was in excess of $100.

INTERPRETATIVE RULING NO. 415

Date issued: March 24, 1987

Applicable Area: Franking

Question considered:

May a Member use the frank to mail, as a mass mailing, voter registration material printed by the local jurisdictions where voting is to occur.

Ruling:

Title 39, Section 3210(a)(3)(H) of the United States Code specifically authorizes the use of the frank for "mail matter which consists of voter registration or election information or assistance prepared and mailed in a non-partisan manner." Additionally, Section 3210(f) authorizes the mass mailing of public service material, whether or not prepared or printed with Congressionally appropriated funds, if the material to be mailed "is purely instructional or informational in nature and . . . in content is frankable under this section." However, Senate Rule 40 (Franking Privilege and Radio and Television Studios), Paragraph 2 provides:

> A Senator shall use only official funds of the Senate, including his official Senate allowances, to purchase paper, to print, or to prepare any mass mailing material which is to be sent out under the frank.

Because of the discontinuity between the Rule and the statute, the Committee has read narrowly the authorization provided by section 3210(f) for the use of the frank to mass mail public service material. It concluded, however, that, since the franking of voter registration information is specifically authorized by section 3210(a)(3)(H), such information may be sent as a mass mailing notwithstanding Senate Rule 40.2.

INTERPRETATIVE RULING NO. 416

Date issued: April 28, 1987

Applicable Area: Franking

Question considered:

May a Senator use franked return address cards to correct his or her media mailing list?

Discussion:

Section 3210 of Title 39 of the United States Code authorizes the use of the frank for "official business" including "the conveying of information to the public."

Additionally, Chapter 1, paragraph 4(c) of the Senate Regulations Governing the Use of the Mailing Frank provides that:

> (c) The sending back of a return-addressed and franked piece of mail to a Senator, or an officer of the Senate, by an addressee does not constitute a loan of the frank if the mail matter is frankable and if the return of the frank remains under the Senator's or officer's control and is used solely to expedite the conduct of official Senate business.

Ruling:

Correcting a media mailing list in order to avoid delays in the release of information to the public would be within the definition of "official business" in section 3210. Furthermore, since the franked cards are pre-addressed so they can only be used to reply to your office, the proposed use of such cards would not be a loan of the frank prohibited by section 3215 of Title 39. Therefore franked return address cards may be used to correct a media mailing list. However, the mass mailing of franked return address cards to correct a general mailing list would be prohibited by Section 8 of the Committee's Regulations Governing Mass Mail.

INTERPRETATIVE RULING NO. 417

Date issued: July 30, 1987

Applicable Area: Franking

Question considered:

The franking statute (39 U.S.C. 3210 et. seq.) authorizes the franking of letters of congratulations to individuals who have achieved some "public distinction."

Have students who have been awarded a Robert C. Byrd Honors Scholarship achieved a "public distinction" for purposes of the Act?

Facts:

The Robert C. Byrd Honors Scholarship Program was established by Public Law 99–498, as a federally-funded state-run program to recognize exceptionally able secondary school students, by providing them with a scholarship toward higher education expenses.

Ruling:

The receipt of a Robert C. Byrd Honors Scholarship is a "public distinction" for which the franking statute authorizes the use of the frank to convey congratulations to the recipient.

INTERPRETATIVE RULING NO. 418

Date issued: September 22, 1987

Applicable Rule: 37

Question considered:

May a Senate employee voluntarily assist the White House Presidential Advance Team if his volunteer assignment would not interfere with his Senate duties?

Discussion

Rule 37 (Conflict of Interest) of the Standing Rules sets forth the standards to be applied in determining whether a Senate employee may engage in outside business or professional activity. Paragaph 3 of Rule 37, places on the employee's supervising Senator the responsibility for determining whether the employee's outside activity might give rise to a conflict of interest and requires that supervisors "take such action as they consider necessary for the avoidance of a conflict of interest or interference with duties to the Senate." To make certain that the supervisors have the information necessary to make the informed decision required by the Rule, paragraph 3 provides that, before an employee becomes involved in any outside business or professional activity, and on each May 15th thereafter so long as the activity continues, he or she must advise the supervisor in writing of the nature of the outside employment.

Ruling

The Committee has always recognized that the employee's supervisor is best able to determine whether outside business or employment is apt to raise a conflict of interest with the employee's responsibilities to the Senate. The Committee does not believe that the proposed activity would violate Rule 37. However, because it cannot foretell the extent of the assignment or of the employee's Senate responsibilities, the Committee reiterates that paragraph 3 of Rule 37 requires that the supervisor continue to monitor the outside business activity to guard against a conflict arising in the future.

INTERPRETATIVE RULING NO. 419

Date issued: September 22, 1987

Applicable Rule and Area: 38, Political Activity

Question considered:

May a Senator accept free radio time to respond to political advertisements which attack his voting record? May an official Senate phone number be provided at the end of the radio response?

Facts:

Approximately eighteen months before a general election a political action committee ran a series of radio advertisements attacking a Senator's voting record. In response, three of the radio stations which ran the advertisements provided free time for the Senator to respond. The Senator also used funds derived from his principal campaign committee to purchase response time on other stations. At the end of the Senator's response, he invited his constituents to use a government provided toll-free number to call his office if they had further questions on his voting record.

Ruling:

Senate Rule 38 authorizes the use of appropriated funds, funds derived from the Senator's campaign committee, and the Senator's personal funds, to defray the Senator's officially related expenses. The Rule generally prohibits the use of funds derived from other sources to pay such expenses.

The Committee has previously ruled that the donation by private sources of goods or services to defray a Senator's officially related expenses is prohibited by Senate Rule 38 (Interpretative Ruling No. 72). However, the Committee has distinguished between in-kind donations to defray officially related expenses, and the normal activities of the news media in fulfillment of their responsibilities which may have the effect of assisting a Senator in carrying out his responsibilities (Interpretative Ruling No. 115). In this case, it appeared that the radio stations providing the air time were fulfilling their responsibility to provide a reasonable opportunity for the discussion of conflicting views on an issue of public importance. Therefore, the acceptance of the free radio time would not violate Rule 38.

The Committee takes no position on whether the acceptance of the free radio time constitutes an in-kind campaign contribution. Senators accepting such time should seek guidance on that question from the Federal Election Commission.

A second issue raised is whether, in the circumstances discussed, inviting constituents to use a government provided toll-free number to inquire about a Senator's voting record constitutes using government facilities to subsidize his campaign. Answering questions about one voting record is clearly part of a Senator's official responsibilities. The fact that he explains his voting record in response to a political attack does not turn such explanations into campaign activities. Since answering such questions remains part of a Senator's job, it may be done using a government provided toll-free number.

INTERPRETATIVE RULING NO. 420

Date issued: October 8, 1987

Applicable Area: Franking

Question considered:

May a Senator include in town meeting notices or other frankable mailings a solicitation for in-kind donations to local charities if the charities involved all receive Federal support for their programs.

Discussion:

"The Regulations Governing the Use of the Mailing Frank" provides in paragraph 18 of Chapter 2 that "[N]o solicitation of funds for any purpose may be made under the franked mail privilege." The Committee is agreed that this restriction is also applicable to in-kind solicitations. There is no exception to this provision for charities that have a Federal connection.

Although the Committee recognizes that certain charities are particularly important to each Senator's state, the Franking Regulations' prohibition on solicitations contain no exception for such charities. Consequently, solicitations on behalf of charities may not be included in a franked mailing.

INTERPRETATIVE RULING NO. 421

Date issued: October 16, 1987

Applicable Rules: 38 and 41

Question considered:

This ruling addresses four questions related to a Senator's campaign committee furnishing a computer to a Senator's office for use in conducting official Senate duties.

Facts:

A Senator's principal campaign committee proposes to purchase a computer and provide it for use in performing official duties. Also, either that committee would purchase a database from his party's Senatorial Campaign Committee and provide it for official use, or the Senatorial Committee would provide the database without charge. The computer would be used to compile and update all of the Senator's positions on legislation, press releases, etc., and the information would be available to any interested party upon request.

Discussion and rulings:

(1) May a Senator's principal campaign committee purchase a computer for use in performing the Senator's official duties?

The Committee has previously ruled that funds from a Senator's principal campaign committee may be used to defray official expenses (See, Interpretative Ruling No. 226) and this would apply to the computer purchase.

(2) May a database be provided by the Senator's principal campaign committee (or either of the party Senatorial Campaign Committees) for use in performing the Senator's official duties, and may information in the database be updated by his Senate staff for official use?

For purposes of applying the Senate Rules, the computer database does not appear to be distinguishable from the computer itself, and Rule 38 would permit either of the listed committees to provide the database to the Senator for his official use.

Once the computer and the database are available for official use, the database may be updated in the same manner as other data files maintained for official use.

(3) May information available through use of the computer and the database be given to the campaign, and if so, in what form and in what manner?

A Senator's principal campaign committee stands on the same footing as any other outside organization, and work-product produced by the computer and database should be treated no differently than any other work-product produced by the Senator's staff in performing official duties.

More particularly, in Interpretative Ruling 154 the Committee observed that:

> As to the possibility of minimal involvement by a staff assistant with campaign-related business, the Select Committee believes that in a Senator's re-election campaign there might be some inadvertent and minimal overlap between the duties of a Senator's staff with respect to the Senator's official duties and his re-election campaign. However, a Senator has the responsibility to ensure that such an overlap is of a de minimus nature and that staff duties do not conflict with campaign responsibilities.

We also note that a Senator must make the initial decision as to whether a staff member (or a Senate facility) is becoming so involved in campaign-related activities that the involvement cannot be considered de minimus, and that the Senator must exercise his best judgment on whether to remove such staff member from the Senate payroll or restrict the non-official use of the facility. See, Interpretative Ruling No. 59. Finally, the Committee brings to the reader's attention the fact that the appropriations and false or fraudulent claims statutes do not contain an express de minimus exception; and the Committee can express no opinion as to whether, or how, such a de minimus standard might be applied by the Justice Department in administering those statutes. See, 31 USC 1301, and 18 U.S.C. 286–7, 1001, and 1341.

(4) May the computer or the updated database be returned to the campaign committee if all the updating was performed by Senate staff on their own time?

The Committee has previously ruled that office furniture and fixtures (which would include a computer) provided for use in a Senator's office by his principal campaign committee should be returned to the campaign committee after its use in the Member's office ended. See, Interpretative Ruling No. 289.

The situation regarding the updated database is to be distinguished, and the Committee concludes that, once updated on equipment dedicated to official use in Federal building space maintained with Federal funds, the enhanced and more valuable database may not be returned to the organization which provided the original diskets, even though the updating was performed by off-duty staff. This would be improper as a misuse of Federal funds for political purposes. (see Interpretative Ruling No. 280)

INTERPRETATIVE RULING NO. 422

Date issued: December 10, 1987

Applicable Rules: 34 and 35

Question considered:

May a sponsor of an event use a plane which had been donated by an organization with a direct interest in legislation to fly a Senator to a seminar at which the Senator will speak. The Senator was not involved in obtaining the plane.

Discussion:

The Senate Gifts Rule provides that no Member, officer, or employee of the Senate may accept gifts aggregating over $100 in value from persons or organizations with a direct interest in legislation. The rule also provides that "gifts" do not include reimbursements for the necessary expenses of travel.

The Committee has previously ruled that a Senator or Senate employee may accept, as "necessary expenses", only expenses provided by the sponsor of the event in which the Senator or employee is participating. Expenses provided to a Senator by an individual or organization other than the sponsor of the event do not qualify for the "necessary expenses" exception. The Committee has also previously concluded that a Member may accept reimbursement from the sponsor of an event notwithstanding the fact that the sponsor was receiving donations from companies with a direct interest in legislation.

Ruling:

The Committee believes that where the sponsor of an event independently arranges for a third party to fly a Senator to the event, the use of the plane should be treated as a necessary expense provided by the sponsor to the Senator, rather than as a gift to the Senator from the third party.

Thus the Senator is not required to reimburse either the sponsor or the plane owner since the plane was provided as a "necessary expense" from the sponsor as permitted by Rule 35 (Gifts). However, the Senator will need to report that he received the travel expenses from the sponsor on his annual financial disclosure statement.

INTERPRETATIVE RULING NO. 423

Date issued: February 5, 1988

Applicable Area: Facilities, Use of Senate

Question considered:

May a Senator allow a group with an interest in a legislative matter to use Senate facilities to advance that matter?

Discussion:

The use of Senate rooms is within the jurisdiction of the U.S. Senate Committee on Rules and Administration. The Rules Committee has informed us that as long as a Senator is sponsoring a group or activity the only restriction on use of rooms assigned to that Senator is that the rooms may not be used for commercial, profit making, or campaign related matters.

Ruling:

Any office wishing to determine whether its proposed use of Senate rooms is prohibited should contact the Rules Committee.

INTERPRETATIVE RULING NO. 424

Date issued: February 5, 1988

Applicable Rule: 36

Question considered:

Should payments received for providing radio commentaries on a continuing basis be considered as "stipends" or as honoraria for the purpose of 2 U.S.C. 31-1 which restricts annual honoraria received by a Senator to 40% of his or her Senate salary?

Discussion:

In interpreting 2 U.S.C. 441i (the $2,000 per appearance limit) the Federal Election Commission has, on several occasions, ruled that payment received for radio commentaries provided on a continuing basis constituted a stipend rather than an honorarium. (Advisory opinions 1980–140, 1980–76, and 1975–46) While the responsibility for interpreting 2 U.S.C. 31-1 (the 40% annual honoraria limit) rests with this committee, we believe that since the definitions of honoraria set out in 2 U.S.C. 441i and 2 U.S.C. 31-1 are substantially consistent, a payment which is not considered an honorarium for the purposes of the $2,000 per appearance limit should not be considered an honorarium for the 40% annual limit.

Ruling:

Payments received for providing commentaries on a continuing basis which the FEC would consider a "stipend" under 2 U.S.C. 441i constitute "stipends" rather than honoraria for the purpose of 2 U.S.C. 31-1 as well. Therefore, those payments do not need to be counted against the 40% annual limitation on honoraria.

INTERPRETATIVE RULING NO. 425

Date issued: February 5, 1988

Applicable Rule and Area: 34, Ethics in Government Act

Question considered:

With respect to certain limited partnership interests a Senator proposes to report the identity of the partnership, indicate the category of value of his interest, give the name and address of the person managing the partnership investments, and include a notice in his disclosure report that anyone desiring information on specific financial and investment activities for any of the partnerships may obtain it upon request from the managers. Will this comply with Senate Rule 34, The Ethics in Government Act?

Discussion:

Senate Rule 34 (The Ethics in Government Act) provides that a reporting individual must disclose, among other things: (1) the identity and category of value of any interest in property exceeding $1,000 which is held for investment as of the close of the reporting period, and (2) for transactions with a value exceeding $1,000, a description, the date, and category of value of each property transaction during the reporting period. The Committee's Financial Disclosure Instruction Booklet further provides that with respect to each investment partnership, each asset of the partnership with a value in excess of $1,000, and each transaction of the partnership exceeding $1,000, should be disclosed.

In developing the language which appears in the Financial Disclosure Instructions at Sections II and V, the Committee attempted to address the standard types of financial arrangements with which most reporting individuals might become involved. A literal reading of Sections II ("Assets and Income") and V ("Transactions") would require and itemized disclosure of assets and transactions with respect to the limited partnership interests in question, since those interests are not described in standard reference materials.

The Committee could not foresee that when these sections of the instructions were strictly applied to all possible investment vehicles there might be an undue administrative burden without an offsetting benefit to the public. However, the Committee has determined that interests in certain investment vehicles which closely resemble mutual funds (i.e. those which are characterized by a small percentage ownership by the reporting individual, numerous investment transactions or holdings, and management by someone other than the reporting individual) may be disclosed by reporting: (1) the identity of the investment vehicle; (2) the category of value of the reporting individual's percentage interest; (3) the name and address of the individual who manages the investment; and (4) a notice that anyone desiring information on the specific financial and investment activities for the investment vehicle may obtain it upon request from the investment manager.

Ruling:

For investment vehicles sufficiently similar to mutual funds, although not fully described in standard reference manuals, the Committee concludes that the disclosure prescribed above provides the public with access to the information which Rule 34 was intended to make available, while removing onerous reporting requirements which do not contribute to the integrity of the disclosure process. The question of whether this ruling is applicable to a particular investment vehicle depends upon the specific facts presented. Therefore, reporting individuals who desire to use this reporting methodology should submit a written request to the Committee including details of investment ownership and complexity of transactions or holdings.

INTERPRETATIVE RULING NO. 426

Date Issued: March, 1988

Applicable Rules: 34 and 36

Question considered:

How must a Member disclose honoraria which are donated to charity?

Facts and discussion:

In general, an honorarium is reportable on the annual financial disclosure report for the year in which it is received. Report the honorarium if the check or payment was *received* by the Member, even if the check was immediately endorsed by the Member to a charitable organization which is exempt from taxation and described in Section 170(c) of Title 26 of the United States Code. At the end of Section I of the disclosure report, the aggregate amounts of honoraria which are donated by the Member to 170(c) charities are also reportable, by amount only, and subtracted from the total honoraria received. The resulting figure represents net honoraria *accepted,* and signifies compliance with the limitations on acceptance of honoriaria. Because honoraria earned during the year which are donated by the payor directly to a 170(c) charity or charities are not deemed to have been either received for disclosure purposes or accepted for limitation purposes, these honoraria and their related donations are not required to be disclosed in the report.

The following questions and answers attempt to address more specific circumstances involving honoraria which require disclosure.

1. Question. If a Member receives an honorarium, deposits the check to his or her account, and then draws a check for donation to a 170(c) charity; how is the honorarium disclosed?

Answer. The total amount of the honorarium (not including travel expenses or agents fees) which was received is disclosed in Section I of the report, even if it was in excess of either of the limitations on acceptance. The amount which was donated to a 170(c) charity is included in the total amount of honoraria donated to charity which is reported at the end of Section I.

2. Question. A Member receives honoraria throughout the year and deposits the checks to his or her account. At the end of the year, the amount which is in excess of either of the limitations on the acceptance of honoraria is figured and checks are drawn to 170(c) charities accordingly. How is the receipt of honoraria and the amount donated to charities disclosed?

Answer. Each honorarium involved in the above question is deemed to have been received by the Member and is reportable in Section I of the Report. The total amount donated to 170(c) charities at the end of the year is shown as the total honoraria donated to charity at the end of Section I. The Committee has also ruled that any interest which accrued to such excess honoraria prior to donation must also be included as part of the donation. However, for disclosure purposes, do not include the donated interest in the figure of total honoraria donated to charity at the end of Section I of the Report.

3. Question. How is an honorarium which is paid to an organization which is not a 170(c) charity reported?

Answer. Honoraria paid by either the payor or the Member to a *non* 170(c) organization must be reported as honoraria received by the Member and should *not* be included as part of the honoraria donated to charity at the end of Section I of the report. A Senator may, however, note in his disclosure report that honoraria was paid to such an organization. However, unlike honoraria which are donated to 170(c) charities, any honorarium paid to a non-170(c) organization is considered to have been accepted for purposes of both the individual appearance and aggregate annual limitations.

INTERPRETATIVE RULING NO. 427

Date issued: September 25, 1987

Applicable Area: Campaign Practices

Question considered:

May Senators offer membership in policy discussion groups or Senate services in return for campaign contributions?

Discussion:

Senators must, as a matter of course, discuss policy and legislative issues with constituents, political supporters and individuals and organizations with specific concerns and interests in legislation. Frequently such meetings will include campaign contributors. However, offering campaign contributors access to those discussions in direct return for campaign contributions creates the appearance that contributors receive special access to the Members, and thereby exercise undue influence on the legislative process.

Ruling:

While solicitations offering access to policy discussion groups may violate no law or Senate rule, they nonetheless affect public confidence in the Senate. Therefore, Senators should not make solicitations which may create the appearance that, because of a campaign contribution, a contributor will receive or is entitled to either special treatment or special access to the Senator.

INTERPRETATIVE RULING NO. 428

Date Issued: February 5, 1988

Applicable Rule: 38

Question considered:

How do the funding source limitations of Senate Rule 38 apply to sponsorship of constituent service seminars or events which are carried out as part of a Senator's official duties?

Discussion:

Constituent service programs, such as seminars and conferences, are often sponsored by Senators or cosponsored with other organizations, and the Committee has recognized the beneficial purposes served by such programs.

The following guidelines, pursuant to Senate Rule 38, apply to a Senator's sponsorhip of constituent service seminars:

1. Expenses incurred in connection with such a seminar and the expenses of individuals providing services in connection with the seminar may be paid with registration fees from seminar participants;
2. Expenses incurred by the Senator or his staff in connection with the seminar may *not* be paid or reimbursed with funds contributed by private cosponsors;
3. If registration or participation fees are involved, joint sponsorship of the seminar is required, a cosponsor other than the Senator's office must handle the collection and distribution of funds connected with the seminar, and all funds remaining after expenses have been paid should either be returned pro-rata to participants, or donated to charity;
4. Each seminar is distinct, should not be associated with any other seminar or event, and no continuing fund or account may exist in connection with such seminars;
5. No non-profit organization or foundation may be created by a Member to be funded with private contributions, for the purpose of sponsoring constituent service seminars undertaken as part of a Member's official duties.

INTERPRETATIVE RULING NO. 429

Date Issued: April 13, 1988

Applicable Area: Franking

Question considered:

Where a Senator's home state presidential primary has been held and the Senator's presidential campaign is suspended, may the Senator frank mass mailings to his home prior to his party's presidential nominating convention without violating the 60 day preelection franking moratorium?

Facts:

A Senator has suspended active campaigning, but remains a candidate for his party's nomination for President of the U.S. and will be listed on the ballot in states where primaries or caucuses are yet to be held. The Senator asks if he may frank mass mailings to his home state constituency, where the home state presidential primary determined the allocation of all the state's convention delegates, and the result cannot be changed by any means.

Applicable law:

Section 3210(a)(6)(C) of Title 39 provides that no member of the Senate may frank a mass mailing if it is mailed fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) for any national, State or local office in which such Member is a candidate for election. The Committee's Franking Regulations state that the moratorium also applies to the period before any convention which has authority to nominate a candidate for the Senate, but that the moratorium does not apply to a Senator who does not face any convention, primary, or general election opposition. The moratorium does apply, however, if there is even the possibility under applicable State law of any opposition, including the possibility of write-in opposition.

Discussion:

In IR 313 the Committee ruled that a mass mailing moratorium in a Senator's home state is not triggered by participation in a presidential primary or the equivalent in another state. The ruling applied a moratorium to those states where the Senator was participating in a presidential primary or general election. Here, the presidential primary (whose results may not be altered by any means) has already been held in the Senator's home state.

As to whether the Senator is subject to a moratorium during the 60 days before the Senator's party presidential nominating convention, the Committee notes that the Senator has only requested approval for mass mailings to his home state, and that any moratorium would have no effect on his use of the frank to communicate with all of that state's convention delegates, because they number less than 500. A moratorium in connection with the nominating convention would, however, impose a burdensome constraint upon the Senator's ability to communicate with his home state constituents at large.

Ruling:

The Senator is not subject to a 60 day moratorium on his use of the frank for mass mailings in his home state, where the presidential primary results are final. Neither will the Senator be subject to a 60 day franking moratorium immediately prior to the nominating convention, for mass mailings to his home state.

INTERPRETATIVE RULING NO. 430

Date Issued: March 31, 1988

Applicable Rule: 35

Question considered:

May a Senate Member, officer, or employee accept meals, beverages or entertainment from a prohibited source while he or she is being provided with a gift of overnight lodging by a non-prohibited source?

Facts:

A campaign committee intends to invite Senate Members and staff as guests on a fund raising cruise. Some Members may receive honoraria for their appearances. The campaign committee is organized under state election laws, is not subject to the Federal Election Campaign Act, and does not have an interest in legislation for purposes of the Senate Gifts Rule (35). The campaign committee will provide the expenses of travel to and from the cruise vessel, and accommodations on the vessel; any honoraria (and necessary expenses in connection therewith) paid to Senate Members will be paid by the campaign committee and not by any of the private contributors. Private parties who do have an interest in legislation will also be on the cruise, and the campaign committee asks whether a Senate Member or employee may accept meals or beverages from the non-sponsor private parties while he or she is being provided with a gift of overnight lodging by the campaign committee.

Discussion:

Senate Rule 35 prohibits a Senate Member, officer or employee from accepting from a prohibited source gifts with an aggregate value in excess of $100 during a calendar year. Meals, beverages or entertainment consumed or enjoyed are excepted from the Gifts Rule by section 2.(a)(6) thereof, provided they are not given in connection with a gift of overnight lodging.

Ruling:

The Committee has concluded that in the case where a Senate Member or employee is receiving a gift of overnight lodging from a source permitted to provide such lodging pursuant to Senate Rule 35, the Member or employee may accept meals and beverages from a separate and distinct source pursuant to and in compliance with the exception provided in section 2.(a)(6) of the Gifts Rule. In such a case, the meals or beverages are not provided "in connection with" the gift of overnight lodging and are therefore within the Gifts Rule exception for meals, beverages or entertainment. Thus, Senate Members or employees who are guests on the fund raising cruise may accept meals or beverages from private contributors while he or she is receiving a gift of overnight lodging on the cruise from the campaign committee. The Committee takes no position as to how the payment of expenses connected with the cruise is to be treated for purposes of either Federal, state or any applicable election or campaign finance law.

INTERPRETATIVE RULING NO. 431

Date Issued: February 29, 1988

Applicable Rule: 37

Question considered:

Does Senate Rule 37.5 prohibit a Senate employee who earns over $25,000 from being registered with a real estate broker in order to maintain her license to sell real estate if the employee provides no services to the broker and receives no compensation?

Facts:

The D.C. Real Estate Commission requires that applicants for a salesman's license must establish an affiliation with a registered broker. An application for a license must be signed by both the applicant and the broker. When granted, the license must be displayed in the broker's office. A Senate employee wishes to have her license held by a broker in order to maintain her license. She will not provide any services for the broker.

Ruling:

Senate Rule 37.5 prohibits Senate employees paid at a rate of over $25,000 a year from affiliating with a firm to provide professional services. The Committee has previously ruled that this rule prohibits Senate employees from affiliating with brokers for the purpose of selling real estate.

In Interpretative Rule 321, however, the Committee decided that an individual was not "affiliating" with a firm when the person was not receiving monetary benefits from the firm, was not providing services for the firm, and was not listed on the firm's letterhead.

Since the employee in this case provided no services to the broker with whom she is registered and received no benefits from that firm, she has not "affiliated with that firm to provide professional services." Therefore she was not in violation of Senate Rule 37.5. That provision would be violated, however, if the employee were to sell real estate or perform any other professional services for the broker.

INTERPRETATIVE RULING NO. 432

Date Issued: April 20, 1988

Applicable Rule: 37

Question considered:

Are the post-employment lobbying restrictions of Rule 37.9 applicable to an individual who performed services for a Senate Committee for more than 90 days if he or she was paid by a source other than the Secretary of the Senate? Would it matter that the person did not sign an agreement to comply with the Senate Code of Conduct?

Applicable rules:

Rule 37.9 prohibits any individual who has served on the staff of a Member from lobbying that Member or the staff of that Member for one year after leaving that staff. It also prohibits any individual who has served on the staff of a Senate Committee from lobbying the Members or staff of that Committee for one year after leaving that staff.

Rule 37.10 provides that for the purpose of Rule 37 "employee of the Senate" incudes an employee or individual described in paragraph 2, 3 and 4(c) of Rule 41.

Rule 41.4(c) provides:

> No Member, officer, or employee of the Senate shall utilize the full-time services of an individual for more than ninety days in a calendar year in the conduct of official duties of any committee or office of the Senate (including a Member's office) unless such individual . . . agrees in writing to comply with the Senate Code of Official Conduct in the same manner and to the same extent as an employee of the Senate.

Ruling:

Since the definition of "employee of the Senate" includes anyone who provides full-time services to a Senate Committee for more than 90 days in a calendar year, even if the person is not paid by the Secretary of the Senate, a non-government employee who performed such services for more than 90 days in a calendar year, would be subject to the post-employment lobbying restrictions of Senate Rule 37.9.

The fact that a person did not sign an agreement to comply with the Senate Code of Conduct as required by Senate Rule 41.4(c) does not mean that the person was not a person described in Rule 41.4(c). Therefore, such a person would still be subject to the post-employment lobbying restrictions in Rule 37.9. While on official trips, such use would not in and of itself convert the membership into an impermissible in-kind contribution to an unofficial office account. Where a gift is given to a Member or employee and may be used at that person's discretion, the fact that the individual later uses it in connection with his or her official duties does not convert a personal gift to a contribution to a Senator's office account. If on the other hand a gift were given for the purpose of meeting official needs, or the natures of the gift or circumstances in which the gift was given made such a purpose obvious, Rule 38 would apply. Neither the nature nor the circumstances of this gift implied that it was for official purposes.

INTERPRETATIVE RULING NO. 433

Date Issued: April 21, 1988

Applicable Rule: 35

Question considered:

May a Member, officer or employee accept and use sports event tickets valued at over $100?

Ruling:

Senate Rule 35 prohibits the acceptance of gifts aggregating more than $100 from a source with a "direct interest in legislation." However, paragraph 2(6) of the Gifts Rule excepts from the definition of "gifts", "meals, beverages, or entertainment are not consumed or enjoyed in connection with a gift of overnight lodging . . ."

The Committee concluded that tickets to sports events are within the Meals, Beverages or Entertainment exception. Consequently, a Senator may use tickets provided by individuals with a direct interest in legislation to go to a sports event even if the value of those tickets exceed $100.

There is no "Meals, Beverage or Entertainment" exception to the disclosure requirement of the Ethics in Government Act. Therefore, the Committee noted that if the value of the tickets when added to other gifts of transportation, lodging, food, or entertainment from the same source exceed $250 for the year, the tickets would have to be disclosed on the Senator's Financial Disclosure Statement as a gift.

INTERPRETATIVE RULING NO. 434

Date Issued: April 28, 1988

Applicable Rules: 35 and 38

Question considered:

May a Senator accept a two-year complimentary membership in an airline's VIP club if that airline has a direct interest in legislation before the Congress?

Facts:

An airline wishes to offer Senators and their spouses a two-year membership in its VIP club. Membership entitles members to use VIP lounges in airports as well as free drinks and the use of free telephones in the lounge. Fees for membership are: a $50 initiation fee, an $80 annual fee and a $40 annual spouse membership fee.

Ruling:

Rule 35 of the Senate Code of Conduct prohibits a Member, officer, or employee, or the spouse or dependent thereof, from accepting any gift or gifts having an aggregate value exceeding $100 during a calendar year from any corporation which has a direct interest in legislation before the Congress.

In determining the value of complimentary memberships, the Committee has previously ruled that such memberships should be valued at their market price at the time of acceptance (Interpretative Rulings 31 and 327). Since the market price to join this club for two years exceeded $100, the two-year membership could not be accepted. A Senator could, however, accept either a one-year membership or a waiver of an initiation fee if the value of that gift did not exceed $100 when added to the value of other "gifts" given by that organization to the Senator during the calendar year.

A Senator's spouse could also accept a membership in an airline's club since the value of the spouse's membership did not exceed $100. Such a gift is considered a gift to the spouse rather than the Member.

Finally, Senate Rule 38 prohibits the establishment of unofficial office accounts and the use of private funds to defray official expenses. In Interpretative Rulings 71, 198 and 332 the Committee concluded that Rule 38 also prohibited Members from accepting in-kind contributions to defray expenses in connection with their official duties. In this case, however, the club membership is for the personal comfort of the Senator. Although the Senator could use the lounges and other benefits of the VIP Club while on official trips, such use would not in and of itself convert the membership into an impermissible in-kind contribution to an unofficial office account. Where a gift is given to a Member or employee and may be used at that person's discretion, the fact that the individual later uses it in connection with his or her official duties does not convert a personal gift to a contribution to a Senator's office account. If on the other hand a gift were given for the purpose of meeting official needs, or the nature of the gift or circumstances in which the gift was given made such a purpose obvious, Rule 38 would apply. Neither the nature nor the circumstances of this gift implied that it was for official purposes.

INTERPRETATIVE RULING No. 435

Date Issued: June 13, 1988

Applicable Rule: 34

Question considered:

How are bonuses treated for determining if an employee is required to file a Financial Disclosure Report?

Applicable law:

Section 101(b) of Title I of the Ethics in Government Act provides:

> (b)(1) Any individual who is an officer or employee of the legislative branch described in subsection (e) [i.e. paid at a

> rate equal to or in excess of GS–16] during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file . . . [a financial disclosure report.]

Facts:

An employee who was paid at a rate of $55,000 a year received a $5,000 bonus. The bonus was distributed to him over a 75 day period so that during that 75 day period his paycheck reflected that he was being paid at a rate of $75,000 a year, which is above the GS–16 rate ($63,135 for 1987). Another employee was paid at a rate of $60,000 a year and received a $5,000 bonus. The bonus was distributed over a 90 day period so that for that 90 day period her paycheck reflected that she was being paid at a rate of $79,000 a year.

Ruling:

The rate of pay for employees who receive bonuses for financial disclosure purposes, is determined by adding the bonuses to their base rate of pay. Therefore, the first employee's rate of pay was $60,000. Since the employee's rate of pay was below the GS–16 level he is not required to file a financial disclosure report. The employee's paycheck during the time that the bonus was distributed inaccurately reflected that he was being paid at above the GS–16 level.

The second employee's pay rate was $65,000 ($60,000 plus a $5,000 bonus). Since that employee's rate of pay exceeded the GS-16 level she must file. Although her paychecks for the period during which the bonus was distributed inaccurately indicated that her rate of pay was $79,000 rather than $65,000, they *did not* inaccurately reflect that she was being paid at above a GS–16 rate.

This analysis only applies to evaluating bonuses. Employees who receive ordinary pay raises to above the GS–16 level for over 60 days must file financial disclosure reports, regardless of their total pay for the year.

INTERPRETATIVE RULING NO. 436

Date Issued: June 13, 1988

Applicable Area: Franking

Question considered:

For the purpose of the Franking Regulations, are school principals "government officials"? Specifically, is a mailing to over 500 school principals considered a "mass mailing", since the definition of a mass mailing does *not* include mailing "government officials"?

Discussion:

The Franking Regulations promulgated by the Ethics Committee define "government officials" to include "any elected or appointed official of the United States and any state territory or political subdivision thereof.

When the Ethics Committee adopted the definition of "government official", it expressly rejected a definition that included "employees" in addition to elected or appointed officials. Therefore, the Committee concluded that there is a distinction between appointed officials and employees. Distinguishing between appointed officials and employees is not always easy. As a general rule, however, "officials" are often elected, entrusted with the performance of some of the sovereign functions of government, and elected or appointed for a definite period of time while "employees" serve under a contract. Additionally, an "official's" duties are established by law while those of "employees" are generally established by contract.

In this case the school principals to whom the mailing was sent were hired by local superintendents on a year-to-year basis with the approval of the local Board of Education. The principals generally served until they resigned or were relieved and were not generally relieved because of a change in the Board of Education. Therefore, it appears that the school principals are professional "employees" who serve under contract rather than "elected or appointed government officials".

Ruling:

The mailing to over 500 school principals was a "mass mailing" and, therefore, was subject to the pre-election moratorium on such mailings established by 39 USC 3210(a)(6)(C), as well as the restrictions and registration requirements established by Senate Rule 40.

INTERPRETATIVE RULING NO. 437

Date Issued: December 15, 1987

Applicable Rules: 34 and 35

Question considered:

Should waivers to Rule 35 of the Standing Rules of the Senate and to Title I of the Ethics in Government Act be provided for gifts received on the occasion of the birth of a child?

Discussion:

The legislative history of the waiver provision of the Ethics in Government Act indicates that the waiver authority was intended to be used "sparingly and infrequently" where there was clearly a personal relationship between the donor and the recipient that would make disclosing the gift embarrassing. For example, in the legislative history of Senate Rule 35 (Gifts), the sole example given of "an unusual case" for which a waiver would be appropriate was one in which a Senate staffer received an "intimate gift" of an engagement ring from her finance who had a direct interest in legislation. Based on this legislative history, the Committee has generally limited the granting of waivers of the Gifts Rule and the Ethics in Government Act to gifts given in connection with engagements and weddings.

The Committee noted that granting waivers of both the Gifts and Disclosure Rules, thereby allowing individuals with a direct interest in legislation to give Senators very expensive gifts without requiring those gifts to be disclosed was inherently subject to abuse and one which should be avoided to the fullest extent possible. The

Committee decided not to expand the limited circumstances under which waivers of both Rules are granted beyond those specifically contemplated in the legislative history.

Ruling:

Although gifts to dependents do not usually need to be disclosed, the Committee concluded that gifts received upon the birth of a child are in fact gifts to the parents and therefore subject to the disclosure requirements. However, the Committee considers it appropriate to waive these requirements for gifts you receive from individuals who do not have a direct interest in legislation or who are not foreign nationals representing a foreign government or foreign organization.

Because the restrictions of the Gifts Rule remain applicable, gifts of over $100 in value, or gifts which would, when aggregated with other gifts given to you by that source, exceed $100 in value during the calendar year, may not be accepted from individuals with a direct interest in legislation, or foreign nationals representing a foreign government or foreign organization.

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